

applying therefor first gives good and sufficient security "for the costs and damages" which the defendant, or the person against whom the writ of injunction is directed, "may suffer by reason of the issue thereof," are not to be construed as giving a right to damages *pleno jure* from the mere fact of the dissolution of the injunction, and without proof that the petitioner for injunction acted maliciously and without probable cause.

30. That when a temporary injunction is allowed to issue after due notice to the defendant, and when an opportunity is thus afforded him of rebutting the charges contained in the petition for injunction, such defendant cannot subsequently claim damages for the improvident issue of the writ, if he neglect to avail himself of the opportunity of denying these charges before the writ issues.

(*Per totam curiam*):

40. That the fact of the petitioner for injunction being a *prête-nom* for others, who are not proved to represent an adverse interest or to have acted maliciously, cannot afford any presumption of malice or of want of probable cause against such petitioner.

50. That in the present case the published statements for the Company gave the respondent reasonable and probable cause for his proceedings.—*Montreal Street Ry. Co. & Ritchie*, Tessier, Cross, Church, Bossé, Doherty, J.J., May 28, 1889.

(Confirmed by Supreme Court of Canada).

SUPERIOR COURT—MONTREAL. *

Bill of exchange—Accommodation draft—Insolvency—Compensation.

On the 25th June, 1888, the defendant accepted G.'s accommodation draft for \$249.75 at three months. On the 24th July, 1888, the defendant purchased goods from G. to the amount of \$215. On the 26th July, 1888, G. made a judicial abandonment for the benefit of his creditors. On the 26th Sept., 1888, defendant paid the accommodation draft.

In a suit by the curator to G.'s estate for the recovery of the \$215, price of goods, de-

fendant pleaded that he was entitled to compensate this sum with the amount he had on the draft for G.'s accommodation.

Held:—1. That the judicial abandonment definitively settles the relative positions of the insolvent and his debtors and creditors;

2. That from the date of the abandonment, all the unsecured creditors acquire the right to be paid by contribution out of the proceeds of the debtor's estate;

3. That compensation cannot take place to the prejudice of rights acquired by the insolvent's creditors by reason of the abandonment, and therefore that creditors are without right of compensation for claims maturing after the abandonment.—*Riddell & Qual. v. Gould, deLorimier, J.*, June 22, 1889.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, July 20, 1889.

Present: LORD WATSON, LORD HOBHOUSE, SIR BARNES PEACOCK, AND SIR RICHARD COUCH.

McDOUGALL & MCGREEVY.

Contract—Violation of condition—Damages, Measure of.

The respondent transferred one thousand shares of railway stock to the appellant, the former to have the right to redeem the stock within two months from date, by paying 50 per cent. of the nominal amount of the shares. The respondent made a sufficient tender within the delay, but the appellant had disposed of the shares, and refused to receive the amount. In an action of damages by respondent, for breach of contract:

Held:—*That the measure of damages was the sum which respondent could have obtained for the shares beyond the amount which he had to pay to get them back; and it not being clearly established that he could have sold the shares for more than this amount, or that appellant received any greater amount therefor, apart from other and subsequent transactions, the action of damages was dismissed.*

The appeal was from a judgment of the Court of Queen's Bench for Lower Canada

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