

leaning on the vehicle, outside of it, when he first saw him, while Leon, *charretier*, and Walter McDonald say that plaintiff was in the sleigh all the time. Henri jumped out, and after picking up a parcel that had fallen out of the sleigh, the two turned round and drove away home, the plaintiff not much hurt apparently, and having his senses perfectly, and swinging out his arms to show that they were all right. The plaintiff's allegation that no sign was up to indicate the railway crossing at St. Philippe street is not true; nor is it true that plaintiff had to keep his bed for a month; nor is it true that a *maladie incurable* has supervened that will shorten plaintiff's existence infallibly. I do not believe that plaintiff suffered much. He made extraordinary efforts to prove the contrary, and to prove his *maladie incurable*, but he failed. His doctors had hard work to say what harm he had received, beyond a slight contusion between the lower ribs and the haunch. They were pressed to swear to impossibilities. The appearance physical of plaintiff before me was excellent. The allegation that he was put to expense of \$200 for medical attendance has not been proved. That plaintiff had to keep his bed for a month is not true. Dr. Scott's evidence is to the contrary. It is unfortunate for plaintiff that Dr. Scott called when he did, to find that the plaintiff, instead of being in bed, was away from his house at St. Henri. He had gone out. This was six or seven days after the accident.

I have said that the damage done to plaintiff is small; but be this as it may, another question is, namely: was or is defendant blameable for it—is *faute* proved against defendants? Upon this I find for defendants. Plaintiff is blameable for the accident by inobservance of precaution at approaching the railway crossing. He, resident at the place, was bound to know that the railway track was there, and he might have known that between five and half-past five three trains would pass there; for such had been the case all that month of November. Certainly no fault can be seen against the defendants; so they must go free.

Roy & Boutillier for plaintiff.

Geo. Macrae, Q.C., for defendants.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

LA BANQUE JACQUES CARTIER v. MEUNIER, and PREVOST et al., creditors collocated, and LA BANQUE D'HOCHELAGA, contesting.

Hypothec—Insolvency.

A hypothec will not be set aside on the ground that the debtor was insolvent at the time it was granted, unless it appear that such insolvency was notorious, or that there was fraudulent collusion between the parties.

PER CURIAM. Prevost & Co. were collocated for the sum of \$811.31, under a mortgage, of date 28th April, 1880. The Bank contested the collocation on the ground that, at the date of the mortgage, Meunier, who gave it, was notoriously insolvent. C. C. 2023. One Marion was debtor of Meunier, and also liable on certain paper, which he (Marion) had received as accommodation from Meunier. He absconded in March 1880, and it became known that Meunier, besides his own liabilities, was seriously affected by the insolvency of Marion. Mr. DeMartigny, Cashier of the Bank Jacques Cartier, says he had a conversation with Meunier, after the departure of Marion, and that he had the appearance of a man completely lost in his affairs with Marion; and gave him the impression that he was not then solvent. "Etait-ce connu dans le monde des affaires? (qu'il a été poursuivi par un grand nombre de personnes). Etait-ce connu généralement? R. C'était à peu près admis qu'il était insolvable." This must have been in the early part of May.

In cross-examination, he is asked: "Au commencement de mai, pouvez-vous dire qu'il était notoirement connu, dans la cité de Montréal, que M. Meunier était insolvable? R. Moi, je crois que j'étais sous cette impression là qu'il était insolvable, après le départ de Marion; dès lors qu'il m'eût déclaré qu'il ne savait pas le montant des billets qu'il avait signés, j'ai cru qu'il était insolvable.

Q. Mais, était-ce une chose généralement connue parmi les hommes d'affaires de la cité de Montréal? Etait-ce des bruits qui couraient la ville?

R. Je crois qu'un certain nombre le croyait; j'ai eu occasion d'en parler avec quelqu'un, et on a dit: ça va entraîner la faillite de Meunier.

Q. Etait-ce avec les Directeurs de la Banque que vous avez parlé de cela?