

## BANQUE NATIONALE V. SAENGER—LENNOX, J.—APRIL 28.

*Money Demand—Action for—Defence—Payment—Evidence—Reservation of Rights as to Moneys Collected in Foreign Country—Interest—Costs.*]—The plaintiffs' claim, as specially endorsed upon the writ of summons, was to recover 342,985.88 francs, or about \$68,597.57. Rudolf Saenger, one of the defendants, made an affidavit, filed with the appearance, in which he swore that he and his co-defendant had a good defence to this action on the merits, viz., "that from the assets of myself and co-defendant in France the plaintiffs have been paid the amount of their claim." The action was tried without a jury at Toronto. The learned Judge said that the examination of the defendant Rudolf Saenger upon commission in New York shewed that his affidavit was untrue. Satisfactory evidence in support of the plaintiffs' claim was taken at Lyons, in France. The amount due was, with interest, 390, 106.19 francs, and judgment should be given to the plaintiffs for that sum, reserving to the defendants the right, by action or other proceeding, to compel the plaintiffs to account for any sums received through the French Government, not already accounted for, and any sums paid in respect of bills payable in enemy or foreign countries subsequent to the execution of the commission in France. Judgment for the plaintiffs for the amount mentioned (in Canadian currency, reckoning a franc as 18 cents), with subsequent interest on the principal money, and with costs, including the costs of appointing a receiver. W. J. McLarty, for the plaintiffs. T. N. Phelan, for the defendants.

## ROELOFSON V. GRAND—BOYD, C.—APRIL 29.

*Contract—Work and Material—Evidence—Rate of Payment—Findings of Fact of Trial Judge.*]—Action to recover \$5,000 and upwards as the balance due to the plaintiff for work done in repairing two hydraulic elevators. The action was tried without a jury at Berlin and Toronto. The Chancellor, in a written opinion dealing with the facts, said that, however decided, this case would be hard on the loser; it was an unsatisfactory dispute owing to the conflict of testimony; the witnesses were credible, but their recollection was imperfect or confused. It was lamentable that the parties did not put in writing the terms arrived at. After consideration of the whole evidence, the Chancellor concluded that the plaintiff's version of the transaction had not been successfully displaced. The written evidence on the crucial point corroborated the plaintiff's oral evidence as to the price of the work which he