

selection, testing, laying and use of such rail, the company is not liable in damages to a passenger injured by the derailment of a train through the breaking of such rail. (Fournier, J., dissenting on the ground that as the accident was caused by a latent defect in the rail in use, the company was responsible.)

Appeal allowed with costs.

H. Abbott, Q.C., for appellants.

Geoffrion, Q.C., for respondent.

New Brunswick.]

MERCHANTS' MARINE INSURANCE CO. v. BARSS.

Marine insurance—Interest insured—Not disclosed when policy issued—Right to claim on—Notice of abandonment—Authority to give.

B. & Co., part owners of the barque "L," cabled to V., managing owner at St. John, N.B.:—"Insure hull . . . on our account." The application made by V. stated that "insurance is wanted by H. B. & Co. on account of themselves," and the policy issued thereon insured the barque on account of whom it may concern. The barque being lost, notice of abandonment was given to the insurers by V. on account of B. & Co., V. having no special authority to give such notice. B. & Co., who owned eight shares in the barque, claimed the insurance on behalf of themselves and other owners whom they represented, being twenty shares in all.

Held:—That the insurers were not relieved on account of the value insured not being disclosed at the time of effecting the insurance.

Held, also:—That V. had authority to give the notice of abandonment under his authority to insure.

Appeal dismissed with costs.

Weldon, Q.C., and *C. A. Palmer* for the appellants.

J. G. Forbes for the respondents.

Manitoba.]

DEDRICK v. ASHDOWN.

Chattel mortgage—Power of sale—Exercise of possession of goods by mortgagor—Implied covenant for—Covenant not to sell goods—Ordinary course of business.

D., a trader, being indebted to A., gave him

a chattel mortgage of all his stock in trade and business effects. The mortgage contained a clause, among others, to the effect that if the mortgagor should attempt to sell or dispose of, or in any way part with the possession of the said goods and chattels, or to remove the same from his business premises, the mortgagee might take possession of and sell them, as in case of default in payment.

After the mortgage had been given and registered, A. obtained judgment in a suit previously begun against D., and issued an execution, under which the sheriff seized and sold the goods covered by the mortgage. The execution was set aside by the Court as being issued against good faith, and D. brought an action of trespass, with a count in trover, against A. for the wrongful seizure and conversion of his goods. Upon the pleas of not guilty and not possessed, the defendant in such action attempted to justify his entry and seizure of the goods under the chattel mortgage, alleging a breach of the covenant not to sell.

Held:—1. That the terms of the chattel mortgage implied an agreement that the mortgagor was to remain in possession of the goods mortgaged until default, there being no express provision to the contrary.

2. That selling or disposing of the goods, as in the above provision, only meant sales other than in the ordinary course of business.

3. That the defendants acted in the seizure and sale of the goods only under the execution, and could not justify for the wrongful seizure under the mortgage, when the mortgagor was guilty of no default.

Judgment of Court below (4 Man. L. R. 139) reversed.

Appeal allowed with costs.

Ewart, Q.C., for appellants.

Robinson, Q.C., for respondents.

SUPERIOR COURT—MONTREAL.*

Stock Exchange—By-laws—Sale of member's seat by governing committee—Defaulter.

HELD:—1. That by-laws which give the governing committee of a stock exchange the

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