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SUPREME COURT OF CANADA.

Quebec.] OTTAWA, June 22, 1891.

ROSS v. HANNAN.

Sale of goods by weight—Contract when perfect—Art. 1474, *C. C.—Damage to goods before weighing—Possession retained by vendor—Effect of—Arts.* 1063, 1064, 1802, *C. C.—Depositary.*

Held, 1st. Per Ritchie, C. J., Fournier and Patterson, J J., affirming the judgment of the court below, M. L. R., 6 Q. B. 222, that where goods and merchandise are sold by weight the contract of sale is not perfect, and the property of the goods remains in the vendor and they are at his risk until they are weighed, or until the buyer is in default to have them weighed, and this is so, even where the buyer has made an examination of the goods and rejected such as were not to his satisfaction.

Held, also, Per Ritchie, C. J., Fournier and Taschereau, J J., that where goods are sold by weight and the property remains in the possession of the vendor, the vendor becomes in law a depositary, and if the goods, while in his possession, are damaged through his fault and negligence, he cannot bring an action for their value.

Appeal dismissed with costs.

Abbott, Q.C., & Campbell for appellant.
Doherty, Q.C., for respondent.

Quebec.]

THE EXCHANGE BANK v. FLETCHER.

Bank stock given to another bank as collateral security—Banking Act—43 Vic. ch. 22, s. 8—Arts. 1970, 1973, 1975, *C. C.*

The Exchange Bank, in advancing money to F. on the security of Merchants Bank shares, caused the shares to be assigned to their managing director and an entry to be made in their books that the managing director held the shares in question on behalf of the bank as security for the loan. The bank subsequently credited F. with the dividends accruing thereon. Later on, the managing director pledged these shares to another bank and absconded.

Held, affirming the judgment of the court below, M. L. R., 7 Q. B. 11, that upon repayment by F. of the loan made to him, the Exchange Bank was bound to return the shares or pay their value.

Appeal dismissed with costs.

Macmaster, Q. C., for appellants.
Archambault Q.C., and *Lacoste, Q.C.*, for respondent.

Quebec.]

NORDHEIMER v. ALEXANDER.

Responsibility—Vis major—Fire—Fall of wall after fire—Negligence—Damages.

Held, affirming the judgment of the courts below, M. L. R., 3 S. C. 283, and M. L. R., 6 Q. B. 402, that the owner of a wall of a house, who allows it to remain standing after a fire in a dangerous condition and takes no precautions to prevent an accident, is liable for the damage caused by the falling of the wall, even if the falling takes place seven days after the fire during a high wind.

Appeal dismissed with costs.

Laflamme, Q.C., Cameron, Q.C., & Butler, Q.C., for appellant.
Duhamel, Q.C., & Marceau for respondent.

Quebec.]

SCHWERSENSKI v. VINEBERG.

Questions of fact—Error—Parol evidence—Art. 1234—*Art.* 14, *C. C.*

S. brought an action to compel V. to render an account of the sum of $2,500, which S. alleged had been paid on the 6th October, 1885, to be applied to S.'s first promissory notes maturing and in acknowledgment of which V.'s bookkeeper gave the following receipt:—"Montreal, October 6th, 1885. Received from Mr. D. S. the sum of $2,500 to be applied to his first notes maturing. M. V. Fred.," and which V. failed and neglected to apply. V. pleaded that he never got the $2,500, and that the receipt was given in error and by mistake by his clerk. After documentary and parol evidence had been given the Superior Court, whose judgment was affirmed by the Court of Queen's Bench, dismissed S.'s action.

On appeal to the Supreme Court of Canada,

Held, 1st, that the finding of the two courts on the question of fact as to whether the receipt had been given through error should not be interfered with.

2. That the prohibition of art. 1234, C. C., against the admission of parol evidence to contradict or vary a written instrument is not *d'ordre public*, and that if such evidence is admitted without objection at the trial it cannot subsequently be set aside in a court of appeal.

3. That parol evidence in commercial matters is admissible against a written document to prove error. *Ætna Ins. Co.* v. *Brodie*, 5 Can. S. C. R. 1., followed.

Appeal dismissed with costs.

Cooke for appellant.
Hutchinson for respondent.

Quebec.]

OWENS v. BEDELL.

Conventional subrogation—What will effect—Art. 1155, *C.C. sec.* 2—*Erroneous noting of deed by registrar.*

Conventional subrogation under art. 1155, sec. 2, C. C., takes effect when the debtor borrowing a sum of money declares in his deed of loan that it is for the purpose of paying his debts, and that in the acquittance it be declared that the payment has been made with the monies furnished by the new creditor for that purpose, and no formal or express declaration is required.

Where subrogation is given by the terms of a deed, the erroneous noting of the deed by the Registrar as a discharge and the granting by him of erroneous certificates, cannot prejudice the party subrogated.

Appeal dismissed with costs.

Butler, Q.C., and *Geoffrion, Q.C.*, for appellant.
Morris, Q.C., for respondent.