

prietor of patents therefor, M. agreed to obtain patents for improvements on said machine and assign the same to McR., who, in consideration thereof, agreed to employ M. for two years, to place the patents on the market, paying him a certain sum for salary and expenses, and giving him a percentage on the profits made by the sales. M. agreed to devote his whole time to the business, the employer having the right, if it was not successful, to cancel the agreement at any time after the expiration of six months from its date by paying M. his salary and share of profits, if any, to date of cancellation.

By one clause of the agreement the employer was to be the absolute judge of the manner in which the employee performed his duties, and was given the right to dismiss the employee at any time for incapacity or breach of duty, the latter in such case to have his salary up to the date of dismissal but to have no claim whatever against his employer.

M. was summarily dismissed within three months from the date of the agreement for alleged incapacity and disobedience to orders.

*Held*, reversing the judgment of the Court of Appeal and of the Divisional Court, that the agreement gave the employer the right at any time to dismiss M. for incapacity or breach of duty without notice, such right being absolute and not required to be exercised judicially, but only in good faith.

*Held*, per RITCHIE, C.J., FOURNIER, TASCHEREAU, and PATTERSON, J.J., that such right of dismissal did not deprive M. of his claim for a share of the profits of the business.

Per STRONG and GWYNN, J.J., that the share of M. in the profits was only a part of his remuneration for his services, which he lost by being dismissed equally as he did his fixed salary.

Appeal allowed with costs.

Dalton McCarthy, Q.C., for appellant.

Quebec.]

ROSS v. HANNAN.

[June 22.

*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*, (1) per RITCHIE, C.J., STRONG, FOURNIER, and PATTERSON, J.J., affirming the judgment of the court below, 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 not 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 default and negligence, he cannot bring an action for their value.

Appeal dismissed with costs.

Abbott, Q.C., and Campbell, for appellant.

Doherty, Q.C., for respondent.

THE EXCHANGE BANK v. FLETCHER.

*Bank stock given to another bank as collateral security—Banking Act—42 Vict., c. 22, s. 8—Arts. 1070, 1073, 1075, 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, 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 and Lacoste, Q.C., for respondent.

NORDHEIMER v. ALEXANDER.

*Fire—Fall of wall after fire—Negligence—Damages.*

*Held*, affirming the judgments of the courts below, 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