The Legal News.

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A curious illustration of the supposed progressiveness of the age is supplied by the fact that the Supreme Court of the United States is about to adjourn for the summer with over a thousand cases unheard. Between three and four hundred cases are disposed of annually, so that there is work enough on hand for three years at least, and cases put on the roll now will have to take their turn at the end of that time. Why should a court adjourn for the summer under such circumstances? A great daily like the London *Times* does not adjourn for the summer, yet the work is as exhausting as that of a court. The continuity is preserved by increasing the number of those by whose joint effort the paper is produced. The same system applied to the Supreme Court would enable it to sit upon every lawful day throughout the year, or to prolong the daily sitting to ten or twelve hours.

Some of the "smart things" attributed to English judges smack of vulgarity—not to say brutality—which would not be tolerated on this side of the Atlantic. For example, the London *Jurist* has the following:—"Some amusement was recently caused by a retort made by Mr. Justice Chitty to a learned counsel. The barrister in question was arguing a case about the possession of agricultural implements and furniture, and when he had finished the first part of his argument, during which the judge frequently rebuked him for irrelevancy, he remarked, 'And now, my Lord, I will address myself to the furniture.' Mr. Justice Chitty: 'You have been doing that for a long time, sir.' If this be true, Mr. Justice Chitty is sadly in need of somebody to teach him manners, and if he were sitting in any Court out of England, would soon find an instructor.

A curious point, illustrating the subtleties of criminal pleading, says the *Jurist*, (London) was taken by a member of the bar as *amicus curiæ* at the late Stafford Assizes. Two men, named Jones and Stone, were indicted for that "they did together assault, with intent to rob," the prosecutor. At the commencement of the proceedings the counsel for the prosecution said he would offer no evidence against Stone, as there was nothing to identify him, and the learned judge (Mr. Justice Manisty) concurring in this course, a formal verdict of "Not guilty" was taken in his favour. The case against Jones was then proceeded with. But at the close of the case for the prosecution a counsel present asked to be allowed to take a point in the prisoner's favour, as he was undefended. Leave having been given, counsel then proceeded to argue that the indictment was laid under s. 43 of 24 & 25 Vic., c. 96, which ran, "Whoever shall .... together with one or other person or persons rob or assault with intent to rob any person ...." The indictment averred that Jones did this together with Stone, but Stone had been declared not guilty, and as the essence of the offence was the combination, it was impossible to convict Jones on that indictment; he should have been indicted separately under the s. 40. Mr. Justice Manisty held, after some argument, that the indictment could not be sustained, and ordered the prisoner to be discharged.

SUPERIOR COURT.

SWEETSBURG, April 5, 1887.

Coram TAIT, J.

WETHERBEE v. FERGUSON et al., and FERGUSON, Opposant.

Procedure—Opposition not contested—Proof—Costs—C. C. P. 586.

HELD:—*That on an uncontested opposition afin d'annuler based upon irregularities, the opposant has a right to make proof ex parte, and the plaintiff will be condemned to pay the costs.*

One of the defendants made an opposition *afin d'annuler* to the seizure made by plaintiff, alleging fatal irregularities on the part of the bailiff, and further, that a mass of goods had been seized belonging to defendants individually, without any specification as to the portion belonging to each; and that

the opposant had an interest in having the property specified in order to have recourse against his co-defendants.

The plaintiff filed a declaration that he did not contest.

The opposant inscribed *ex parte*, and proceeded to examine witnesses under objection of plaintiff. The only witness apart from the bailiff was the opposant's brother, who admitted that he was present to attend to an opposition he had in Court; was told that he would be taxed in this case and the opposant in his, and supposed he was examined so as to be taxed.

When the case was submitted by the opposant, it was admitted by the plaintiff that the opposition must be maintained with costs against him, if he was responsible for the bailiff's irregularities, but he contended that, as he did not contest, the opposant had a right to be relieved from the seizure without subjecting the losing party to costs of *enquête*; that an opposition *afin d'annuler* based upon irregularities and illegalities required no oral proof, and the plaintiff should not be mulcted in costs of a useless *enquête*.

The opposant urged that he had a right to prove that the portion of the mass of property seized belonged to him.

In reply, the plaintiff argued that the pretension of the opposition was as to the irregularity in not specifying the particular owner of property seized, etc., and no proof was necessary to show the irregularity which was not contested. 586 C. C. P. was cited. The 84th Rule of Practice is very clear as to opposition being maintained without proof, where plaintiff declares he does not contest.

The judgment was as follows:—

"Considering that the declaration filed by plaintiff, that he did not contest the said opposition *afin d'annuler*, was and is an admission on his part that opposant had a right to be relieved from the seizure, etc., by reason of the irregularities and defaults therein complained of on the part of the bailiff charged with the writ of execution;

"Considering that, notwithstanding said declaration, opposant had a right to make proof *ex parte* in manner and form as he hath done;

"Considering that plaintiff, under the circumstances of this case and the proof made, should be held responsible for said irregularities and defaults of said bailiff, etc., doth set aside and annul the seizure, etc., and maintain said opposition with costs against plaintiff."

Noyes & Bernard for plaintiff.
Baker & Martin for opposant.
(J. P. N.)

SUPERIOR COURT.

AYLMER, (Dist. of Ottawa,) April 20, 1887.

Before WÜRTELE, J.

KENT et al. v. Ross et al.

Insolvency—Revendication by curator of goods removed from his custody.

HELD:—*That the curator to the property abandoned by an insolvent trader has the right to revendicate goods removed without his consent from his custody, without previously taking the advice of the creditors and being judicially authorized, but at his own risk and cost.*

PER CURIAM:—The plaintiffs were appointed joint-curator to the property abandoned by one Isaïe Hortie, an insolvent trader.

They allege in their declaration that they were placed in possession by the provisional guardian of the property so abandoned, and that the defendants wrongfully removed and took away from their possession and custody, certain goods and effects forming part of the insolvent's stock in trade; and they seek to revendicate the same.

The defendants demur to the declaration and ask for the dismissal of the action, because it was instituted without the advice of the creditors or inspectors having been taken and without any permission of the court or judge in accordance with article 772 of the Code of Civil Procedure.

This article requires the previous permission of the court or judge when the curator wants to exercise a right of action of the debtor or a right of action possessed by the mass of his creditors; and the reason of this is that he should not be allowed to institute proceedings which may involve the estate in expense without due consideration on the part of those interested and judicial authorization.

But in the present case, the demand is not the exercise of a right of action which belonged to the insolvent nor of a right of action possessed by the mass of his creditors. The plaintiffs, as joint-curator, are responsible for the safe keeping of the property of the insolvent, and are accountable therefor to his creditors, and in their own interest they have an action in their own right as depositaries, under article 866 of the Civil Code, to revendicate the goods and effects wrongfully taken from their custody. In doing so, they exercise a right of action of their own; but they must do it at their own risk and costs. They have therefore no need to consult the creditors or inspectors, nor to obtain any judicial authorization.

I am of opinion that the demurrer is unfounded and I dismiss it, with costs.

The judgment was registered in the following words:—

"The Court, &c.

"Seeing that the defendants allege that the plaintiffs in their quality of joint-curator to the property of the said debtor, Isaïe Hortie, had no authority to institute the present suit without the permission of the court or of a judge;

"Considering that such permission is required under article 772 of the Code of Civil Procedure, to empower the Curator to the property of an insolvent trader, to exercise the actions of the debtor or the actions possessed by the mass of his creditors;

"Seeing that the action in this cause is an action to revendicate certain goods and effects, which are alleged to belong to the said debtor, Isaie Hortie, and to have been in the possession of the plaintiffs in their said quality, and which the defendants are alleged to have removed and taken away from the possession and custody of the plaintiffs, without their consent and against their will, and to detain wrongfully, illegally and unjustly;

"Seeing that the plaintiffs are personally responsible to the mass of the creditors of the said debtor, Isaïe Hortie, to account for the said goods and effects;

"Considering that the plaintiffs, as the depositaries of the goods and effects in question, have the right to revendicate the same at their own risk and costs;

"Seeing that the action in this cause is one which appertains to the plaintiffs personally, and in their own right, and is not one in which a right of action of the said debtor, Isaie Hortie, nor a right of action possessed by the mass of his creditors, is exercised;

"Considering therefore that the provision above mentioned of article 772 of the Code of Civil Procedure does not apply to the present case;

"Considering that the allegations set forth and contained in the plaintiffs' declaration are sufficient to establish a right of action, and that the allegations set forth and contained in the demurrer pleaded by the defendants are unfounded in law;

"Doth over-rule and dismiss the said demurrer, with costs."

N. A. Belcourt, for Plaintiffs.
Major & Talbot, for Defendants.

SUPERIOR COURT.

AYLMER, (Dist. of Ottawa,) Feb. 24, 1887.

Before WÜRTELE, J.

MAJOR et vir, v. MCCLELLAND.

Execution—Recourse of third party claiming right of ownership in the effects seized.

HELD:—*That in the case of the seizure of moveables, the proper recourse of a third party claiming a right of ownership therein is by opposition, and not by an action and attachment in revendication.*

PER CURIAM. — The defendant obtained judgment against one Frederick Fooks, and seized certain effects in his possession, which were placed under the care and guardianship of one James Thom. The sale was stopped by an opposition and the effects are still under seizure, but have been placed by the guardian in the hands of the defendant in this cause.

The female plaintiff claims the effects so seized as her property, and has brought the present action to revendicate them. In her declaration she first sets up her right of ownership, and she then alleges that the

effects in question had been seized at the instance of the defendant, and placed under the guardianship of James Thom.

The defendant has demurred to the action on the ground, amongst others, that the female plaintiff's recourse is by opposition and not by action in revendication.

Articles 580 and 582 of the Code of Civil Procedure, provide that the seizure of moveables in execution may be contested by opposition, either by the debtor or by third parties, and that any party claiming a right of ownership in the property seized may oppose the execution.

The corresponding article of the French Code of Civil Procedure uses similar language: "Art. 608. Celui qui se prétendra "propriétaire des objets saisis, ou de partie "d'iceux, pourra s'opposer à la vente par ex- "ploit signifié au gardien, et dénoncé au sai- "sissant et au saisi....." Boitard (Vol. 2, No. 863), in commenting upon this article, says: "Les demandes en distraction ne sont "autre chose que des revendications, c'est-à- "dire des actions par lesquelles le deman- "deur se prétend propriétaire des effets sai- "sis sur une autre personne..... L'article "608 détermine les formes de ces demandes "en revendication....." And Jaccotton (Actions Civiles, Nos. 69 et 70), in this connection, remarks: "Jusqu'ici, nous nous som- "mes exclusivement occupé du cas où le "propriétaire, agissant par voie principale, "est tenu de faire procéder sa demande d'une "saisie-revendication. Mais il faut aussi, et "cela arrive très fréquemment, former inci- "demment sa demande, lorsque les meubles "qu'il revendique ont déjà été frappés d'une "saisie-exécution par un créancier du déten- "teur. C'est le cas prévu par l'article 608 "du Code de Procédure Civile..... Il ré- "sulte virtuellement de l'article 608 que celui "qui se prétend propriétaire d'objets que "l'on veut saisir ne peut pas s'opposer à la "saisie et n'a que le droit de former opposi- "tion à la vente. Il en résulte encore que le "propriétaire ne peut pas exercer sa reven- "dication à l'instant même de la saisie. In- "dépendamment du texte de la loi qui paraît "justifier cette opinion, on peut l'appuyer "sur un motif qui nous semble péremptoire, "c'est que la saisie à laquelle il est procédé, "nonobstant la réclamation du propriétaire, "ne saurait lui causer un dommage sérieux. "Car le but de cette mesure, pour lui comme "pour les créanciers, est de placer les meu- "bles qu'il revendique sous la main de la "justice, ce qu'il aurait été obligé de faire "lui-même par une saisie-revendication, et, "par conséquent, de conserver ses droits qu'il "peut faire valoir ensuite par une opposition "à la vente."

In this case the seizure is in force, and the guardian James Thom, is responsible for the production of the effects seized.

Once a thing is seized, a person claiming a right of ownership in it, cannot proceed by way of attachment in revendication, but must proceed, as prescribed by the articles just mentioned of our code of civil procedure, by way of opposition. The attachment is unnecessary as the thing is already under judicial control and subject to the order of the court, and the demand made by the opposition is a form of the exercise of the action of revendication. I am of opinion that an opposition is the proper way to bring such a claim before the Court, and that the ground of demurrer which I have mentioned is well founded.

The plaintiff referred at the argument to some cases which he contended supported his view, that he had the right to proceed by action and attachment in revendication; but I found on examining the reports, that in the cases referred to the actions were taken where the effects sought to be revendicated, had been seized under warrants of distress issued by Justices of the Peace, or under warrants for the levy of taxes in municipalities where no provision had been made for oppositions. In these cases, the property seized was not subject to the direct order of the Court, and the proper way to bring it under the control of the court, was by an attachment in revendication. The law moreover gave no other recourse to the claimants. They do not therefore apply to the present case.

I maintain the demurrer and dismiss the action.

The judgment was drafted and registered as follows:

"The Court, &c;

"Seeing that the female plaintiff seeks to revendicate by this action certain effects which she claims as her property; and that she alleges in her declaration, that the said effects had been seized in the possession of one Frederick Fooks, at the instance of the present defendant, under and in virtue of a writ of execution issued from the Circuit Court, in and for the district of Ottawa, in a certain cause bearing the No. 547, wherein the present defendant was plaintiff and the said Frederick Fooks was defendant, and placed under the care and guardianship of one James Thom;

"Considering that at the time that the said effects were seized by way of revendication, they were already under judicial control;

"Considering that under and in virtue of articles 580 and 582 of the Code of Civil Procedure, the proper recourse of the female plaintiff is by opposition to the seizure of the effects and not by attachment in revendication;

"Considering therefore that the present action is unfounded in law and that it has been wrongfully brought;

"Considering that the ground or reason lastly alleged and set forth in the demurrer pleaded by the defendant, is well founded and sufficient to obtain the dismissal of the present action:

"Doth dismiss the action in this cause, and release the effects seized in revendication from the attachment in revendication, with costs."

N. A. Belcourt, for Plaintiffs.
Henry Aylen, for Defendant.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Secretary-treasurer—Notice of action—C. C. P. 22—Quebec Election Act, 38 Vic., ch. 7—Transmission of duplicate of electoral list to Registrar.

HELD: — 1. (Affirming the decision of TASCHEREAU, J., M. L. R., 1 S. C. 323):—A public officer is not entitled to notice of action under C. C. P. 22, where the action is for a penalty for failing or omitting to do what the law requires him to do.

2. (Reversing the decision of TASCHEREAU, J., *supra*). The fact that the electoral list was still under the consideration of the Council, is not a valid ground of defence, where a secretary-treasurer is sued for a penalty for not transmitting a duplicate of the list to the registrar of the registration division, within eight days after it came into force, as required by 38 Vict. (Q.) ch. 7, and the penalty may be recovered even where the secretary-treasurer does not appear to be in bad faith. *Jodoin*, Appellant, and *Archambault*, Respondent, Nov. 23, 1886.

SUPERIOR COURT.—MONTREAL. (*)

Lessor and Lessee—Repairs to leased premises—Putting lessor en demeure to make repairs.

HELD:—That the lessee is not entitled, without first putting the lessor *en demeure*, to demand the resiliation of the lease because repairs are necessary. Unless the condition of the premises be such as absolutely to prevent his use and enjoyment, the proper course is for the lessee to ask that the lessor be ordered to make the repairs which are necessary, and, in default, that the lessee be authorized to make them at the lessor's expense.—*Pagels* v. *Murphy*, In Review, Johnson, Papineau, Gill, JJ., Dec. 30, 1886.

Procedure—Tierce-opposition—Saisie-arrêt—C. C. P. 510, 625.

HELD:—That a tierce-opposition, unless accompanied by an order of a Court or judge, does not suspend the execution of a judgment, and that a *tiers-saisi*, paying in good faith the amount of the final judgment, will be discharged notwithstanding the prior service upon him of a tierce-opposition, without order of suspension.—*Mullen et al.* v. *Pearl, & Trépannier, & The Commercial Union Ass. Co., T. S.*, Cimon, J., Jan. 13, 1887.

Cour du Recorder de Montréal—Juridiction—Prohibition avant conviction—Preuve testimoniale.

* To appear in Montreal Law Reports, 3 Q. B.

(*) To appear in Montreal Law Reports, 3 S. C.

JUGÉ:—1o. Que la Cour du Recorder de la cité de Montréal a juridiction sur les matières et offenses consistant à tenir *une maison malfamée et une maison de désordre* dans la cité de Montréal.

2o. Qu'un bref de prohibition peut émaner avant la conviction.

3o. Que la preuve testimoniale peut être légalement faite sur un bref de prohibition émané avant la conviction.—*McKeown & La Cour du Recorder et al., & La cité de Montréal*, Taschereau, J., 31 mars 1887.

Fabrique—Indemnité à un marguillier—Délit—Ratification—Nullité absolue—Marguillier en charge.

JUGÉ:—Qu'une résolution d'un Conseil de Fabrique décidant de payer à un des marguilliers une somme d'argent, à même les deniers de la fabrique, pour l'indemniser d'un pareil montant qu'il aurait été condamné à payer sous forme de dommages à un tiers, en conséquence d'un délit par lui commis dans l'exercice de sa charge, est nulle, illégale et *ultra vires*.

2o. Que le fait que cette somme a été entrée dans la reddition de compte du marguillier en charge, laquelle reddition de compte fut soumise à une assemblée des anciens et nouveaux marguilliers et approuvée par eux, sans protestation de la part du contestant qui était présent à l'assemblée, et que ce compte fut ensuite approuvé par l'évêque, ne constitue pas de la part du contestant une ratification qui lui enlève le droit de contester la légalité de la dite résolution, surtout lorsque ce dernier a préalablement protesté contre la dite résolution; que d'ailleurs cette ratification d'un acte *ultra vires* serait sans valeur.

3o. Que dans l'action pour faire déclarer nulle et illégale une semblable résolution, il n'est pas nécessaire de mettre en cause le marguillier en charge qui a fait le paiement suivant la résolution.—*Perras* v. *Les curé et marguilliers de l'œuvre de la paroisse de St-Isidore et al.*, Jetté, J., 31 mars 1887.

Voiturier—Responsabilité—Retard dans l'expédition.

JUGÉ:—Qu'une compagnie de transport (voiturière) est responsable des dommages qu'elle cause, par le fait qu'elle ne transporte pas, dans un délai raisonnable, au lieu de leur destination, les choses à elle confiées.—*Pontbriand* v. *The Grand Trunk Railway Co. of Canada*, Papineau, J., 31 mars 1887.

COUR DE CASSATION (CH. CIVILE).

11 mai 1886.

Présidence de M. BARBIER, premier président.

HOUEL et PICARD v. LETELLIER.

Louage de services—Ouvrier—Règlement d'atelier—Congé—Renvoi sans motifs—Usages locaux—Interprétation—Cassation.

Les patrons et les ouvriers peuvent, sans porter atteinte à aucun principe d'ordre public, déroger aux usages locaux, concernant les congés à donner, soit par les patrons, soit par les ouvriers.

A ce titre est donc valable la clause d'un règlement affiché dans les ateliers d'une fabrique, portant que, "quel que soit le mode de paiement, les ouvriers de l'établissement ont le droit de faire établir leur compte à toute heure de la journée, et de s'en aller quand bon leur semblera; les patrons, par réciprocité, peuvent les renvoyer à n'importe quelle heure de la journée."

L'ouvrier qui a accepté, avec connaissance de la dite clause, de travailler dans la fabrique, ne peut en aucun cas prétendre droit à une indemnité contre le patron, pour renvoi sans motifs.

Le jugement qui en décide autrement, sous prétexte d'interprétation, dénature la convention, intervenue entre le patron et l'ouvrier, et encourt la censure de la Cour de cassation.

LA COUR,

Vu l'art. 1134 C. civ.;

Attendu que les patrons et les ouvriers peuvent, sans porter atteinte à aucun principe d'ordre public, déroger aux usages locaux concernant les congés à donner, soit par les patrons, soit par les ouvriers;

Attendu, en fait, que les sieurs Houel et Picard ont fait afficher dans les endroits les plus apparents de leurs ateliers un règlement portant une clause ainsi conçue: "quelque soit le mode de paiement, les ouvriers de l'établissement ont le droit de faire établir leur compte à toute heure de la journée et de s'en

aller quand bon leur semblera; les patrons, par réciprocité, peuvent les renvoyer à n'importe quelle heure de la journée ;"

Attendu que des énonciations de l'arrêt attaqué il résulte que le sieur Letellier n'a accepté de travailler dans les ateliers des sieurs Houel et Picard qu'avec connaissance de la clause ci-dessus énoncée ;

Attendu, dès lors, que le contrat s'étant formé par l'accord intervenu entre les patrons et l'ouvrier, ce contrat doit être exécuté suivant les termes mêmes de la convention ; que ces termes sont clairs, formels et non susceptibles d'interprétation; que c'est dénaturer la convention de soutenir qu'elle ne prévoyait pas le cas d'un renvoi sans motifs ;

Attendu qu'en condamnant dans ces conditions les sieurs Houel et Picard à payer au sieur Letellier une somme de 22 fr. pour la semaine de congé à laquelle celui-ci prétendait droit, le jugement attaqué a violé les articles de loi invoqués par le pourvoi ;

Par ces motifs,

Casse.

NOTE.—Les règlements d'atelier, qui dérogent aux usages locaux, obligent les ouvriers, comme les patrons, lorsqu'ils ne contiennent rien de contraire à l'ordre public, et que d'ailleurs les ouvriers ne les ont point ignorés : Cass. 14 février 1866 (S. 66.1.194); 15 avril 1872 (S. 72.1.232); 7 août 1877 (S. 77.1.107.) D'ailleurs la preuve de la connaissance, que les ouvriers ont eue de ces règlements, peut se faire, dans tous les cas, par témoins, ou par simple présomption. Cass. 16 janvier 1866 (S. 66.1.7).

COUR DE CASSATION (CH. DES REQUÊTES.)

17 mai 1886.

Présidence de M. BÉDARRIDES.

TROTTIN v. MALANÇON ET CIE.

Marchés à terme—Exception de Jeu—Banquier—Fortune apparente du spéculateur—Bonne Foi—Cassation—Appréciation souveraine.

La question de jeu, dans l'hypothèse où il peut y avoir incertitude sur le caractère d'opérations à terme, en vue de bénéfices à réaliser sur la variation des cours des effets publics, est une question de fait et d'intention, qu'il appartient aux juges du fond de trancher dans la plénitude de leur pouvoir souverain d'appréciation.

Et le rejet de l'exception de jeu, opposée à un banquier, demandeur en paiement d'un solde d'opérations de bourse, auxquelles il a procédé comme mandataire et pour le compte d'un tiers, est suffisamment justifié par cette constatation souveraine en fait, que les opérations litigieuses n'étaient pas en disproportion avec les facultés apparentes du mandant, et qu'il n'est pas établi que le dit banquier ait prêté sciemment son concours à des opérations aléatoires.

Ainsi jugé sur le pourvoi en cassation du sieur Trottin contre un arrêt de la Cour de Paris du 19 juin 1885, rendu au profit des sieurs Malançon et Cie et rapporté Gaz. Pal. 85.2.45.

LA COUR,

Sur le moyen unique du pourvoi tiré de la violation des art. 2, 1965 C. civ., et fausse application de l'art. 1er de la loi du 28 mars 1885 :

Attendu que la question de jeu dans l'hypothèse où il peut y avoir incertitude sur le caractère d'opérations à terme, en vue de bénéfices à réaliser sur la variation des cours des effets publics, est une question de fait et d'intention qu'il appartient aux juges du fond de trancher dans la plénitude de leur pouvoir souverain d'appréciation ;

Attendu que si l'arrêt attaqué constate qu'après une série de marchés à terme sur différentes valeurs se soldant en bénéfice encaissés par Trottin, Malançon et Cie, d'ordre et pour le compte de celui-ci, ont acheté, le 9 janvier 1882, fin courant, 200 actions alpines, et que, faute de prendre livraison, tous ces titres ont été revendus le 31 du même mois, avec une perte de 35,975 fr. 75 cent., réclamée à Trottin par Malançon et Cie, le même arrêt ajoute que les opérations auxquelles Trottin s'est livré, n'étaient pas, par leur importance, en disproportion avec ses facultés apparentes, et qu'il n'est pas établi que Malançon et Cie aient prêté leur concours à des opérations aléatoires ;

Attendu que ces constatations souveraines, exclusives d'un concours prêté sciemment par Malançon et Cie à des opérations de jeu constituent des motifs juridiques qui suffisent à justifier le rejet de l'exception de jeu

opposée par Trottin à la demande en paiement dirigée contre lui par Malançon et Cie, et rendaient inutile l'examen de la question relative aux effets de la loi du 28 mars 1885;

Rejette.

NOTE.—La question directement soumise à la Ch. des requêtes par le pourvoi, dans son moyen unique, était celle de savoir si la loi du 8 avril 1885, sur les marchés à terme, doit être ou non appliquée avec un effet *rétroactif*. La Cour d'appel l'avait, contrairement à l'opinion la plus généralement suivie, V. l'état de la jurisprudence sur cette question controv. en note sous Douai 11 janvier 1886 (Gaz. Pal. 86.1.298), résolue affirmativement. La Ch. des requêtes, à l'examen de laquelle elle n'avait point encore été soumise, l'a, dans l'espèce, purement et simplement écartée. Après s'être formellement prononcée, par des motifs à elle propres, dans le sens de la rétroactivité de la loi dont s'agit, la Cour de Paris avait, en effet, adopté les motifs du jugement, qu'elle confirmait par son arrêt. Or, pour repousser l'exception de jeu, déjà proposée devant eux, les premiers juges s'étaient fondés sur l'ignorance dans laquelle le banquier, demandeur, s'était trouvé du caractère aléatoire des opérations, auxquelles il prêtait son intermédiaire, sans d'ailleurs qu'aucune des circonstances de la cause pût être considérée comme ayant été de nature à le lui révéler. En décidant que dans cet état des faits souverainement constatés, et dût-on même appliquer l'art. 1965 C. civ., abstraction faite de la loi du 8 avril 1885, comme le voulait le pourvoi, l'exception de jeu avait, dans tous les cas, dû être écartée, la Ch. des requêtes n'a fait que persister dans les errements d'une jurisprudence qui, antérieurement à la dite loi du 8 avril 1885, n'était, depuis longtemps déjà, plus discutée. V. notamment Cass. 18 novembre 1885 (Gaz. Pal. 85.2.722); 9 mars 1886 (Gaz. Pal. 86. 1.452); 6 avril 1886, (Gaz. Pal. 86. 1, supp. 122), rejetant des pourvois formés contre des décisions antérieures à la dite loi.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, April 30.

Judicial Abandonments.

Charles McCambridge, Montreal, April 26.

Curators appointed.

Re Dunbard Beaudry, manufacturer.—G. A. Bouillet, Montreal, curator, April 26.

Re Louis Landry, plumber and gasfitter.—Seath & Daveluy, Montreal, curator, April 19.

Re D. Rees & Co., Montreal.—A. W. Stevenson, Montreal, curator, April 19.

Dividends.

Re Louis Béland, Sorel.—Dividend, payable May 25, Kent & Turcotte, Montreal, curator.

Re L. Carpentier, Sorel.—Dividend, payable May 25, Kent & Turcotte, Montreal, curator.

Re Louis Cousineau.—First and final dividend payable May 17, C. Desmarteau, Montreal, curator.

Re A. Goyer.—Dividend, L. J. D. Beaudry, Montreal, curator.

Re Emile Guenette, St. Dominique.—Dividend payable May 25, Kent & Turcotte, Montreal, curator.

Re Rivet & Picotte, hatters and furriers.—Dividend, Seath & Daveluy, Montreal, curator.

Re Spénard & Bédard.—First and final dividend, payable May 18, C. Desmarteau, Montreal, curator.

Separation as to property.

Virginie Thibault vs. Jean-Bte. Lavoie, carpenter, Montreal, April 22.

Quebec Official Gazette, May 7.

Judicial Abandonments.

P. J. A. Noël, general storekeeper, St. Antoine de Tilly, May 5.

Curators appointed.

Re Chs. McCambridge, Montreal.—C. Desmarteau, Montreal, curator, May 4.

Re Robert Mauger, trader, St. Adelard de Pabos.—H. A. Bédard, Quebec, curator, May 2.

Re J. J. McCorkell, biscuit maker, Quebec.—H. A. Bédard, Quebec, curator, May 2.

Re P. J. A. Noël.—E. Bégin, N.P., Quebec curator, April 30.

Re Pepin & Boire, contractors.—Seath & Daveluy, Montreal, curator, May 3.

Re F. X. Rinfret, trader, Matane.—H. A. Bédard, Quebec, curator, May 4.

Re Felix Vachon, trader.—H. A. Bédard, Quebec, curator, April 13.

Separation as to property.

Marie George vs. André Phaneuf, farmer, township of Magog, April 30.

Elizabeth Trudeau vs. Eusèbe Auclair, navigator, Sorel, May 2.

GENERAL NOTES.

THE LIABILITY TO FENCE.—In an action by a child of tender years to recover damages for injuries sustained by falling down a hole in a vacant lot where she was playing, where it was not shown that the defendant did anything more than merely suffer or permit the use of the lot by children, there is not an invitation which would impose any duty or responsibility for the condition of the lot. (*Galligan v. The Metacomet Manufacturing Company*, Sup. Ct. Mass. 3 N. Engl. Rep. 704.)