The Legal News.

Vol. III. MAY 22, 1880. No. 21.

THE BANKING ACT.

The amendments to the Banking Act made by the bill assented to on the 7th instant, include one which changes the law regulating loans as laid down in the recent case of *Bank of Montreal* v. *Geddes* (*ante* p. 146). Section 51 of the Banking Act (34 Vic.), cited in that case, is repealed, and the following substituted for it:—

"51. The Bank shall not make loans or grant discounts on the security of its own stock, but shall have a privileged lien for any debt or liability for any debt to the Bank, on the shares and unpaid dividends of the debtor or party so liable, and may decline to allow any transfer of the shares of such debtor or party until such debt is paid, and if such debt is not paid when due the Bank may sell such shares, after notice has been given to the holder thereof, of the intention of the Bank to sell the same, by mailing such notice in the Post Office to the last known address of such holder, at least thirty days prior to such sale; and upon such sale being made, the President, Vice-President, Manager or Cashier shall execute a transfer of such shares to the purchaser thereof in the usual transfer book of the Bank, which transfer shall vest in such purchaser all the rights in or to such shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the Bank or by the officer of the Bank executing such transfer;

"And nothing in this Act contained shall prevent the Bank from acquiring and holding as collateral security for any advance by or debt to the Bank, or for any credit or liability incurred by the Bank to or on behalf of any person (and either at the time of such advance by, or the contracting of such debt to the Bank, or the opening of such credit, or the incurring of such liability, by the Bank), Dominion, Provincial, British, or Foreign public securities, or the stock, bonds, or debentures of municipal or other corporations except Banks; and such stock, bonds, debentures, or securities, may, in case of default to pay the debt for securing which they were so acquired and held, be dealt with, sold and conveyed, in like manner and subject to the same restrictions as are herein provided in respect of stock of the Bank on which it has acquired a lien under this Act; This provision may, however, be departed from or varied by any agreement between the Bank and the owner of such stock, bonds, debentures or securities, made at the time at which such debt was incurred, or if the time of payment of such debt has been extended, then by an agreement made at the time of such extension."

It will be seen that loans on the collateral security of shares of corporations are now expressly permitted.

Sect. 26 of the 34th Victoria is also amended by adding the following thereto as a subsection thereof:—

"(2) No person holding stock in any Bank as executor, administrator, guardian or trustee, of or for any person named in the books of the Bank as being so represented by him or her, shall be personally subject to any liabilities as a stockholder, but the estate and funds in his or her hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust-funds would be, if living and competent to hold the stock in his or her own name; and if the trust be for a living person, such person shall also himself or herself be liable as a shareholder: but if such testator, intestate, ward or person so represented is not so named in the books of the Bank, the executor, administrator, guardian or trustee shall be personally liable in respect of such stock, as if he or she held it in his or her own name as owner thereof."

CONTRACTS IN RESTRAINT OF TRADE.

Contracts in restraint of trade have received their latest illustration in the case of *Roussillon* v. *Roussillon*, which was decided by Mr. Justice Fry two or three days back. The plaintiffs, who are champagne merchants at Epernay, and have a place of business in London, applied for an injunction to restrain the defendants from carrying on a rival trade. The defendant went into the employment of the plaintiffs at Epernay

in 1866. He remained there two years, and was afterwards employed by them as a traveller in England and Scotland. In 1869, in return for the kindness bestowed upon him by the plaintiffs, and for the trouble they had taken in his commercial education, he undertook not to represent any other champagne house for two years after leaving their service. He also undertook, if at any time he left the plaintiffs' house for any reason whatever, not to establish himself nor to associate himself with any other persons or houses in the champagne trade for ten years. The defendant left the plaintiffs' employment in 1877, and the defendant established himself in London as a vendor of Ay champagne. Proceedings were instituted in the Tribunal of Commerce at Epernay by the plaintiffs, who obtained judgment by default. The defendant was thereby restrained from representing any champagne house for two years, and from carrying on the business of champagne merchant for ten years. The present proceedings were brought to enforce either the contract or the judgment. Two questions were thus raised. His Lordship was of opinion that the rule to be deduced from the authorities was, that the restraint must not be unreasonable, having regard to the circumstances of the business to be protected. He thought the restraint in this case was not larger than the reasonable protection of the plaintiffs' business warranted. Must the contract, then, be partial to one place? Such a rule, in his opinion, could be evaded by exception. There were businesses, considering the facilities of communication, which were very well conducted over the whole country or a larger area, and other businesses which could only be interfered with in a limited area. "In the first case," his Lordship went on to say, "a universal restriction would be reasonable; in the second, it would be unreasonable to render the contract void. * * The supposed rule as to locality would only apply to those cases in which, in my judgment, it ought not to apply; and therefore, unless there is strong authority to bind me, I should hold that there was no such rule." In the recent case of *Collins* v. *Locke*, 41 L. T. Rep. N. S. 292, it appears to have been fully admitted by the Privy Council that contracts in restraint of trade are against public policy unless the restraint they impose is partial only, and they are made for good consideration and are reasonable. The main consideration, however, appears to be whether the restraint is larger than the necessary protection of the party with whom the contract is made and is unreasonable and void, as being injurious to the interests of the public on the grounds of public policy. In *Leather Cloth Company* v. *Lorsont*, L. R. 7 Eq. 355, Vice-Chancellor James stated that all restraints upon trade are bad as being in violation of public policy, unless they are natural and not unreasonable for the protection of the parties in dealing legally with some subject-matter of contract. His Lordship explained that the same public policy which enables a man to sell what he has in the best market, enables him to enter into any stipulation, however restrictive it is, provided that restriction, in the judgment of the court, is not unreasonable, having regard to the subject-matter of the contract. Restrictions even indefinite in time have been held valid, as in *Bunn* v. *Guy*, 4 East, 190, or for a life of the party restrained, as in *Hitchcock* v. *Cocker*, 6 A. & E. 438. Again Vice-Chancellor Leach, in *Bryson* v. *Whitehead*, 1 S. & S. 74, enforced an agreement by a trader upon selling a secret in his trade to restrain himself for twenty years absolutely from the use of such secret, and intimated that the trader might restrain himself generally. Mr. Justice Fry, relying upon *Leather Cloth Company* v. *Lorsont* and other cases, came to the conclusion that the plaintiffs had established a right to an injunction.—*Law Times*, London.

NOTES OF CASES.

JUDICIAL COMMITTEE OF PRIVY COUNCIL.

February 3, 1880.

Present:—Sir James W. Colvile, Sir Barnes Peacock, Sir Montague E. Smith, Sir Robert P. Collier.

Lambkin, Appellant, and The South-Eastern Railway Co., Respondent.

Personal Injuries—Negligence of railway servants—Estimation of Damages.

Per Curiam. This is an action brought against the South-Eastern Railway Company of the Province of Quebec to recover damages which the plaintiff sustained by reason of an

accident to a train in which he was a passenger. The plaintiff obtained a verdict, with damages $7,000. The Railway Company applied to the Superior Court of Montreal for a new trial upon a number of grounds, including misdirection, the verdict being against the evidence, and the damages being excessive. That Court unanimously expressed themselves satisfied with the verdict, and refused a new trial. Upon this the defendants appealed to the Court of Queen's Bench. The Court of Queen's Bench, as their Lordships understand, expressed their approval of the verdict, or, at all events, expressed no disapproval of it upon any ground except that of excessive damages; and upon that ground alone directed a new trial. From that judgment of the Court of Queen's Bench the present Appeal is preferred.

It has been sought to uphold the judgment upon grounds other than that on which it was pronounced—viz., that the verdict, in as far as it finds negligence on the part of the Company, is against evidence, and that the Judge misdirected the jury. With respect to the verdict being against evidence, it appears to their Lordships, as indeed they have before intimated, that the question of negligence, being one of fact for the jury, and the finding of the jury having been upheld or at all events not set aside by two Courts, is not open under the ordinary practice to the defendants. However, the defendants have argued, as they had a right to argue, the question of misdirection; and the direction of the learned Judge cannot be considered altogether apart from the evidence to which it applies.

Without going at length through the evidence, it is enough to say that the plaintiff was a passenger on the 13th August, 1874, on the defendants' railway, and that the accident occurred at a point between the station of Abercorn and the station of Sutton, the distance from one to the other being about 5½ miles; that the line between the two stations is intersected by a number of streams, which are all spanned by bridges, and at times, perhaps generally, contain but little water, but are apt to be flooded after storms. It appears that on the evening before the accident, the 12th August, a violent and most unusual storm had occurred, perhaps in the nature of a waterspout, which carried away five out of six bridges between the two stations. The next morning, at half-past six, the train in which the plaintiff was travelling dashed into the bed of one of these streams, of which the bridge had been demolished, without any warning whatever having been given to the driver of the train. The result was that some persons were killed and many injured—the plaintiff among them. It was the duty of four men, headed by one who is sometimes called "the boss," to look after the railway between these two stations, a part which would appear to require more than usual care and attention. It was the duty of these men, upon the occurrence of the storm, and some of the bridges being washed away to their knowledge on the previous evening, to use all exertions in their power to stop the train which was coming in the morning. Of two of these men we hear nothing. A third, Doran, who lived at a house rather more than a mile from Sutton, was called; and he speaks of a bridge close to his house being carried away, and of his apprehension that other bridges would be carried away, and says that upon starting on the line in the direction of the Abercorn station in the morning at about four o'clock he was unable to proceed. He then went to the Sutton station, and requested the station-master to telegraph to Abercorn, but it was ascertained that the telegraphic communication was interrupted. Doran, who had borrowed a horse, returned to his own house and planted a flag at the place where the bridge opposite to his house had been demolished; but instead of riding on to ascertain the state of the bridges between his house and Abercorn, he put the horse up and contented himself with remaining where he was. It appears to their Lordships that the jury might have come to the conclusion fairly upon the evidence, that if he had ridden on he might have arrived at the place where the accident occurred in time to stop the coming train. White, the foreman or "boss," was not called. He appears to have done but little. He was aware, according to some evidence, that one of the bridges had been washed away as early as four o'clock in the morning. He appears to have made no effort to go beyond the bridge at Doran's house. The time he arrived there is not very clearly fixed. If it was, as Doran says, at a quarter before six, he would have had time to stop the coming

train, which, although due before, did not arrive till half-past seven. Whether he was there at that time or not, it appears to their Lordships that upon the evidence the jury were warranted in the conclusion that he was guilty of negligence.

The summing up of the learned Judge must be taken with reference to the circumstances of the case and to the evidence. The following passage has been picked out and objected to: "First of all, was there time to give notice? "That, of course, is easily answered; there was "time. Then, was there a possibility of doing "it? That is the question." Their Lordships have read through the summing up of the learned Judge; and although he may not have explained the law quite as clearly or fully as might have been desired, they are unable to see that he has misdirected the jury. He appears to have put to them as a question of fact whether there was time for either of the men to have got to the place of the accident so as to stop the train; and further, whether, if there was time—that is, if there had been time under ordinary circumstances,—there were physical obstacles, such as the unusual depth of the intervening streams, which would have prevented it; for, undoubtedly, during a portion of the night all the streams were so deep as to be scarcely passable, whereas in the morning the mountain flood had subsided almost as rapidly as it had arisen. The duty of the servants of the Company must be taken with reference to the emergency; and the jury might be properly told that those persons who had charge of the line ought, and were bound, to do all they could to stop the train which was rushing on destruction. It appears from the summing up, taken as a whole, that the learned Judge, when using the word "possibility," meant to put to the jury whether all was done which was reasonably and practically possible under the circumstances of the case. Their Lordships, therefore, are of opinion that there was no misdirection.

We now come to the question whether the damages were excessive. It appears that the plaintiff was found soon after the accident with his head jammed between two pieces of timber; that it took two or three hours to release him, which was done by cutting away the timber; that he was then conveyed to Richford, a place at no great distance, and was attended to by two or three surgeons, among others, by a surgeon of the company. The surgeon who first saw him, or at all events who saw him very soon after the accident, is a Mr. Fassett, who thus describes his injuries:—"The wounds "upon the face were—a cut upon the right side "of the lower jaw; and above that, near the "ear, there seemed to be a bruise. Upon the "forehead, near the right, was a cut; it seemed "to be simply a cut. Over the left eye there "was a severe bruise, which seemed to have "been caused by pressure rather than a blow. "That was the idea it gave me on examining it. "The wound on his thigh was a lacerated and "punctured wound. He lay upon the bed, "apparently not noticing things around him, "restless, tumbling about, not heeding anything "apparently that was going on." He goes on to say that the man was from time to time delirious, and adds:—"I think I gave an "opinion at the time at Richford that his "condition was dangerous then, and if he "recovered at all he would probably not fully "recover, and I am still inclined to favor that "opinion." He attributes the injury of the brain to pressure, his theory being that the two sides of the skull were to a certain extent pressed together. The plaintiff was attended by Mr. Hamilton, a surgeon employed by the company to take care of the wounded, and he gives a description of the state of the plaintiff not materially different from that of the last witness. He says the plaintiff was delirious for two or three weeks when he attended him; that he was subsequently removed, and that he had seen but little of him between the time of the accident and the time of the trial, which was just twelve months. He expresses no very confident opinion about his state. He thinks he may recover, but will not undertake to say that he will, or to fix any probable time for the recovery. We have further the evidence of Dr. Gibson, the medical attendant of the plaintiff, who speaks of him as being in a very dangerous state at Richford, so dangerous that at one time his life was despaired of. He does not speak to having attended him very much subsequently, for his physical health appeared to have improved, and he says very candidly that he thought medicine would do him little good; but he speaks to having had a conversation

with him shortly before the trial, from which it would appear that his brain was still affected; not that he was idiotic or insane, but that his conversation was rambling, and that he was unable to fix his ideas upon any subject or to attend to business. This witness also declines to give an opinion as to whether the man would ever thoroughly recover, although possibly he might recover.

There is a considerable body of other evidence. The plaintiff calls his brother, his cousin, and some neighbors, the effect of whose evidence may be shortly stated to be that the plaintiff was in partnership with his brother, the plaintiff being the elder and the more active partner; that they carried on business as builders, and that the plaintiff did the work of an architect,—was capable of designing a house or public building and seeing to the execution of his design; that they carried on business as manufacturers of cabinet and other articles; that the plaintiff also, being an active and industrious man, from time to time charged $3 or $4 a day for his own work, in addition to the profit on the work of the laborers he employed and on his materials; and that the two brothers were making some $5,000 or $6,000 a year. The evidence, though not perhaps as conclusive as might be desired on this subject, is to the effect that the business had to a certain extent suffered. The brother said that he had to refuse some orders which otherwise he would have accepted; there is evidence on his part, and also that of the neighbors, of the business having fallen off; it is obviously probable that the business would fall off, more perhaps in future years than at once. There is further evidence that the plaintiff, although before the accident a strong vigorous man, with much capacity for business, became incapacitated for business; that he was weak and languid in physical health, and unable to fix his attention continuously upon one subject, from the time of the accident up to the time of the trial. One witness, a director of the company, who can scarcely be supposed to be biassed against them, says: "I have tried to talk business with him "lately. I did not find him the same man "that he used to be. If he goes to talk about "business, he wanders directly and gets astray. "I cannot say but what this must affect his "fortune. He has not been engaged in building since the accident. I do not think he "was able to do so."

On the part of the Company Dr. Scott was called, who said that he did not think that the symptoms complained of by the plaintiff could arise from compression of the skull, inasmuch as he thought that, at the age of the plaintiff, the skull would not be compressible without fracture. The further effect of his evidence appears to be that he thought, from the description which he had heard of the injuries, that the plaintiff ought to have recovered; therefore that he had recovered, and therefore that he must be feigning illness. He says that, without having seen the plaintiff, he is as confident in his opinions as if he had seen him, a confidence which appears to their Lordships to contrast unfavorably with the caution with which the evidence of the other medical men is given.

Assuming the jury to have believed the evidence on the part of the plaintiffs, their Lordships think that they would have been wrong if they had confined the damages, which they had to assess once and for all, solely to what the plaintiff had lost at the time of action brought or at the time of the trial; that it was their duty to take into consideration that the plaintiff had been disabled for twelve months; that he had not then recovered, and that it was doubtful, according to the best evidence, whether he would recover at all, or, if he did recover, when he would recover; and although an estimate of future damages must necessarily be of a somewhat rough and speculative character, still they were bound to give him some damages in respect of the future loss which he would sustain.

The learned Judges appear to have directed a new trial upon the supposition that the jury only gave damages in respect of what the plaintiff had lost at the time either of action brought or of the trial, and that those damages are excessive. Such is the view certainly of Mr. Justice Sanborn, who says: "It "is impossible that three or four weeks' illness "and more or less loss of time for some months "of a man who earned four dollars a day could "occasion a loss of $7,000." Their Lordships may observe that Mr. Justice Sanborn seems not to have been quite correct in estimating the loss of the plaintiff as of a mere labourer

who earned $4 a day, inasmuch as the evidence is that the plaintiff not only earned $4 a day in addition to the profit upon his workmen and materials, but carried on business as a manufacturer. It appears to have been inferred that the jury intended to assess damages only up to the time of the trial, from their answer to one of the questions put to them in the articulation of facts. But their Lordships are by no means satisfied that such was the intention of the jury. They are first asked :—"Has the plaintiff ever "since the said accident been disabled from "doing business, and to what extent is he dis- "abled from attending to business? Answer.— "He has been disabled up to the present time;" —that is to say, they did not think him cured. Then the question is put, which divides itself into three :—"Is the plaintiff the head of a "family composed of his wife and three child- "ren? Are they all dependent upon his labour "for their maintenance? Have they ever since "been deprived of his labour, and to *what extent* "*in the future will they be deprived of his labour?* "Answer.—He is the head of a family consist- "ing of a wife and three children; one, a son, "is not dependent; wife and two girls depend- "ent." The answer to the second part of the question is :—"They have been deprived;" and to the third, the jury answer that they cannot form a judgment.

Their Lordships scarcely understand on what principle this question should have been put to the jury. The question in the cause was not what damage had been sustained by the plaintiff's wife and children, but what damage had been sustained by himself. If he had been killed, and such an action as that brought under Lord Campbell's Act in this country could be maintained in Canada, then the question would be what damage was sustained by his wife and children. But the jury are further asked, "To what extent in the future will the "wife and children be deprived of his labour?" It had been originally proposed to put the question in the form :—"For what time, under "probable circumstances, or in all probability, "would they be deprived?" But on the defendants' objection the question stands in its present form, and the jury are required to fix the time when the plaintiff will recover. They declined to do what no witness, medical or otherwise, had attempted, but their Lordships do not therefore infer that when they answer the further question, "Has the plaintiff suffer- "ed damages by the said accident, and, if so, to "what amount?" they excluded all consideration of future loss. If they had thought that the plaintiff would be disabled for all the rest of his life, in their Lordships' view the damages would be too small; but if they adopted the intermediate view, which seems to be, on the whole, the result of the evidence of the plaintiff's witnesses, medical and otherwise, that the plaintiff had been seriously injured, that he still continued to suffer, that his brain still continued somewhat affected, that he was unable to attend to business, and that it was uncertain whether he would ever recover, although he might recover, their Lordships feel unable to say that the damages given were so excessive as to justify a new trial upon that ground. They observe that the law of Canada, as expressed by the Article 426, section 11, is not far different from that of this country upon this subject: "If the amount awarded be so small "or so excessive that it is evident the jury "must have been influenced by improper mo- "tives, or led into error," then a new trial must be granted. On the whole, their Lordships are by no means satisfied that the damages are of such an excessive character as to show that the jury have been either influenced by improper motives or led into error, and they are of opinion that there ought to be no new trial.

Therefore, their Lordships will humbly advise Her Majesty that the judgment of the Court of Queen's Bench be reversed, that the judgment of the Superior Court of Montreal be affirmed, and that the Appellant have the costs of the Appeal in Canada and of the Appeal to Her Majesty in Council.

SUPERIOR COURT.

MONTREAL, April 30, 1880.

QUINTAL v. MONDON et al.

Sale of moveable successively to two persons—C. C. 1027—Fraud of second purchaser.

JOHNSON, J. This is an action to recover damages from the defendants for having demolished a house on the plaintiff's land and belonging to him; I say belonging to him, because though the defendants raise the question of his

right of property, there really can be no doubt about it; for, apart from the adjudication by the Sheriff, in which they contend there was error in including the house, the plaintiff expressly purchased the house itself from the defendant in the case in which the adjudication took place, and who had made an opposition to withdraw it from the seizure. The demolition of the house, which is the act complained of, and the participation of all the defendants are proved facts. They plead separately: Mondon, the party principally responsible, seems to lay stress on his not having personally been present, and the other defendants rely on the rights of Madame Simard, who bought the house from Primeau after he had already sold it to the plaintiff. Now, this man Primeau who, as I have said, was the defendant in the case of *Defayette* v. *Primeau*, was the son of Mme. Simard, whose pretension to the right of property is supposed to have justified these defendants in what they did. The plaintiff answers the defendant's pretensions in this respect by charging Primeau and his mother with fraud and connivance in effecting the sale to her after he had already sold the same thing to the plaintiff. The fraud and connivance are not difficult to see, under the circumstances. But it is said on behalf of the defendants that Mme. Simard had occupied this house for some months, and had possession, and therefore under the law, if it is a *moveable*, she is entitled to preference over first purchaser; and if it is an *immoveable*, her title executed before a notary and registered is superior to the plaintiff's. It is quite clear in my opinion that Mme. Simard at all events cannot pretend this frame of a house was an immoveable: she removed it, and used the material to build another. Besides, it had been treated as a moveable detached from the land, by all the parties. The defendant in the case in which it was seized so treated it, filed an opposition, and got it *distrait* from the rest of the property seized. He contended all along it was no part of the *realty*, and ought not to be sold with it, and even now all the defendants contend the same thing, and say the sheriff's deed gave no title to the frame of the house; and the plaintiff, to make sure, bought it from Primeau, one of these very defendants, for $30. So that the question is narrowed down to one of title to a moveable; and it is evident therefore, that under the latter part of Article 1027, a posterior title, even with possession, is worthless where there is fraud of this description. There remains only the point of damages. All the defendants are jointly and severally liable under their pleas which assert their right. The house was worth $12 to $15 a year to rent, the act complained of was an outrage; and Mondon and Simard and Primeau were in very bad faith.

Judgment for $200, interest and costs.

Doutre & Co. for plaintiff.

Loranger & Co. for defendants.

SUPERIOR COURT.

[In Insolvency.]

MONTREAL, May 15, 1880.

SEATH, insolvent, and FAIR, assignee.

The insolvent who has obtained the confirmation of his discharge is not subject to the summary jurisdiction of the Insolvent Court.

JETTÉ, J. Le Syndic, en cette affaire, a obtenu une règle contre le failli lui enjoignant de lui remettre les livres de la faillite, sous peine d'emprisonnement.

Dans sa Requête demandant l'émission de cette règle, le Syndic allègue que le failli n'a été mis en possession de ces livres que pour lui faciliter la perception des créances, et que le dit failli refuse maintenant de les rendre ou même d'en donner communication au Syndic, qui est en droit de les ravoir et y a intérêt, pour les créanciers, attendu qu'il a lieu de croire que des préférences frauduleuses ont été accordées par le failli à quelques-uns de ses créanciers peu de temps avant sa mise en liquidation forcée.

Le failli répond:

1o. Que le 13 Avril 1880, il a obtenu la confirmation par la Cour d'un acte de décharge à lui accordé par ses créanciers, et que par suite, il n'est plus soumis à la juridiction sommaire de la Cour ou du Juge dont on demande l'application contre lui par cette règle.

2o. Que les livres dont le Syndic demande la possession ont été vendus avec les créances à la Banque Molson, qui les a transportés ensuite au failli, et que par suite, celui-ci est bien fondé à les garder.

La première réponse du failli soulève une question d'interprétation de l'article 25 de la loi de faillite.

Cet article dit :

" 25. Le failli, *tant qu'il n'aura pas obtenu une* " *ratification de sa décharge*, sera assujéti aux " ordres de la Cour ou du Juge, et à tel autre " interrogatoire que le juge, le syndic, les ins- " pecteurs ci-après mentionnés, ou les créanciers " jugeront à propos de lui faire subir, et il devra " faire exécuter aux dépens de la masse de ses " biens toutes les pièces et instruments néces- " saires par écrit, *et accomplir tous les actes qui* " *seront requis de lui par la cour ou par le juge* " *relativement à ses affaires;* et dans le cas où le " failli refuserait de prêter serment ou de ré- " pondre à quelque question qui pourrait lui être " posée, ou de signer ses réponses à ces questions, " ou les pièces ou instruments par écrit, ou dans " le cas qu'il refuserait d'accomplir aucun des " actes légalement requis de lui, il pourra alors " être incarcéré et puni par la cour ou le juge " comme pour mépris de cour."

Le langage du législateur est donc très clair, puisque ce n'est que *tant qu'il n'a pas obtenu une ratification de sa décharge*, que le failli est soumis à la juridiction exceptionnelle et sommaire de la Cour ou du Juge, pour tous les cas prévus dans cet article de la loi.

Ici les créanciers ont consenti à la décharge du failli, et cette décharge a été confirmée sans objection de la part d'aucun d'eux ; le failli doit donc avoir le bénéfice entier des dispositions de la loi, et il est impossible de le soumettre aujourd'hui à une juridiction dont les créanciers eux-mêmes ont bien voulu l'affranchir.

Mais on dira peut-être que cette décharge repose sur le consentement frauduleux de créanciers qui n'avaient pas droit d'y figurer? C'est possible, et la loi ne laisse pas les créanciers sans remède en pareil cas ; l'article 66 leur permet de faire révoquer une décharge ainsi obtenue. Mais tant que ce moyen n'a pas été adopté, la présomption légale est en faveur du jugement rendu sur cette décharge, et le failli doit en avoir tout le bénéfice.

Clarke, dans son commentaire sur la loi de faillite, p. 202, cite un jugement rendu en Angleterre, où il a été décidé que le failli *même après sa décharge*, peut être trouvé coupable de mépris de Cour, pour avoir refusé de remplir quelqu'un des devoirs que la loi lui impose, mais l'acte de faillite anglais, de 1869, en vertu duquel ce jugement a été rendu est bien différent du nôtre. Le même pouvoir et la même juridiction sommaire que l'acte anglais donne au juge par la sec. 19 est bien donné au juge ici par la sec. 25 de notre acte ; mais le statut impérial ne contient aucune restriction quelconque, tandis que notre statut fédéral contient la restriction importante que j'ai signalée.

La règle doit donc être renvoyée avec dépens.

R. Laflamme, Q.C., for Assignee.

H. L. Snowdon, for Seath.

COURT OF REVIEW.

MONTREAL, April 30, 1880.

RAINVILLE, PAPINEAU, JETTÉ, JJ.

HOE et al. v. MULLIN et al.

[From S. C., Montreal.

Contract—Option—Form of demand.

The case was inscribed in review from the judgment of the Superior Court, TORRANCE, J., Oct. 6, 1879, noted at p. 342 of vol. 2, Legal News.

The Court of Review unanimously confirmed the judgment.

Davidson & Cushing, for plaintiffs.

Doherty & Doherty, for defendants.

RECENT U. S. DECISIONS.

Charter-party—"About to sail"—"Every way fitted for the voyage"—The words "about to sail from Benizaf with cargo for Philadephia," contained in a charter-party, *held* to mean, under the circumstances of this case, to sail as soon as with reasonable diligence a cargo could be got on board.

The stoppage of a steamer for five hours at a port in the course of her voyage, for the purpose of taking in a small quantity of additional coal, *held*, under the circumstances of this case, to be no breach of a provision in the charter-party that such steamer was "in every way fitted for the voyage." *Von Lingen* v. *Davidson*, (U. S. District Court, Maryland, March 6, 1880.)