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Two interesting decisions, with reference to mistake or misapprehension on the part of the vendor, come from the Western States. One of them is undoubtedly erroneous. The first case, *Wood* v. *Boynton* (64 Wis. 265), occurred in Wisconsin. A poor woman, for the sum of one dollar, sold a stone which she believed to be topaz, the purchasers being jewellers in Milwaukee. When examined by a lapidary, it was ascertained that the stone was not topaz, but an uncut diamond the value of which was nearly a thousand dollars. Mrs. Wood, the vendor, on being informed of this, tendered back the dollar, and demanded the stone, which being refused, she brought an action to recover possession of the diamond. The court held that the stone being open to the inspection of both parties, both being ignorant of its real nature and true value, and there being no showing of actual fraud on the part of the jewellers in procuring the sale, the bargain could not be rescinded. This is not only contrary to equity, but is also very bad law. Pothier puts this very case: "Il n'y a point de contrat de vente si l'un compte vendre une chose, et l'autre en acheter une autre. Pareillement il n'y a point de contrat de vente, si l'on me vend un sac d'orge que je prends pour du blé: ou un tabatière de tombac que je prend pour de l'or; car quoique nous convenions du corps qui est vendu, nous ne convenons point *de la matière qui en fait la substance*, et par conséquent nous ne convenons point proprement de la chose vendu; ce qui fait dire à Ulpien: *Nullam esse venditionem puto, quoties in materiâ erratur; d.* L. § 2." It will be remembered that in England, in the famous case of *Reg* v. *Ashwell* (9 Leg. News, 45), seven of the judges were of opinion that it was larceny at common law for a person who had received a sovereign by mistake for a shilling, to retain and appropriate the money.

In the second and more recent case, *Sherwood* v. *Walker* (10 Western Rep. 636), which came before the Supreme Court of Michigan, the point was more difficult, but the court came to a conclusion which is totally opposed to that of the Wisconsin tribunal. One party sold a cow which, as a breeder, would be of great value, but was supposed by the owner and purchaser to be barren, and useful only as beef. The animal was therefore sold for 5½ cents per pound, but before she was delivered, she was found to be with calf, a fact which increased her value to nearly $1,000, and the vendor refused to deliver. The first court held that the discovery did not avoid the sale, though the real value of the animal was ten times the price agreed upon. The Supreme Court, however, held this to be error, and the sale was rescinded. The court said: "I know that this is a close question, and the dividing line between the adjudicated cases is not easily discerned. But it must be considered as well settled that a party who has given an apparent consent to a contract of sale may refuse to execute it, or he may avoid it after it has been completed, if the assent was founded, or the contract made, upon the mistake of a material fact, such as the subject matter of the sale, the price, or some collateral fact materially inducing the agreement."

LE TABLEAU DES AVOCATS.

D'après le tableau des avocats de la Province de Québec pour l'année 1887-88, publié au mois de mai dernier, il y avait alors 699 membres de cet ordre inscrits et ayant droit de pratiquer devant nos tribunaux.

Le plus ancien est Mr. Hugh Taylor, de la section de Montréal, résidant en Angleterre, dont la date d'admission remonte à novembre 1829.

Viennent ensuite quatre vétérans qui étaient étudiants dans le premier tiers de ce siècle, ce sont:

Mr. John Day, C. R., de Montréal, admis à la pratique en 1834.

Mr. L. G. Baillargé, C. R., de Québec, admis en 1835.

L'Honorable Mr. E. L. Pacaud, C. R., d'Arthabaska, admis en 1836.

L'Honorable Mr. R. Mackay, ex juge, de Montréal, admis en 1837.

De ceux qui ont débuté dans la carrière de 1840 à 1849 il reste encore vingt-quatre praticiens au tableau. Voici leurs noms avec l'année de leur entrée au barreau :—

Messieurs	F. W. G. Austin	1841
	Rouer Roy	1842
	S. Bethune	1843
	C. S. Burroughs	1843
	G. Joseph	1843
	Jas. Armstrong	1844
	E. G. Pelletier	1844
	Ged. Ouimet	1844
	M. McLeod	1845
	Euclide Roy	1845
	G. Macrae	1846
	E. U. Piché	1846
	J. J. C. Abbott	1847
	S. R. Fleming	1847
	W. H. Kerr	1847
	Jas. Malouin	1847
	George Irvine	1848
	D. A. Ross	1848
	F. T. Judah	1848
	J. J. Bates	1849
	W. A. Bates	1849
	M. Branchaud	1849
	R. Laflamme	1849
	F. B. Godin	1849

Il y en a 39 dont l'admission date de 1850 à '59, 178 de 1860 à '69, 175 de 1870 à '79, et 278 de 1880 à mai 1887.

La section de Montréal compte 440 membres, repartis comme suit entre les différents districts qui composent cette section :—

Montréal	332
Ottawa	25
Richelieu	23
Iberville	14
Joliette	14
St. Hyacinthe	13
Terrebonne	11
Beauharnois	8

La section de Québec, formée des districts de Québec, Saguenay, Chicoutimi, Beauce, Montmagny, Kamouraska, Rimouski et Gaspé, compte 146 membres.

Les autres 113 membres qui complètent le nombre total de 699 donné ci-dessus forment les quatre sections rurales, dont 38 dans celle du district de St. François, 36 dans celle du district des Trois-Rivières, 22 dans celle du district de Bedford, et 17 dans le district d'Arthabaska.

G.

COUR DE CIRCUIT.

MONTREAL, 11 décembre 1887.

Coram DAVIDSON, J.

ROY v. GRANGER.

Mari — Responsabilité — Marchandises vendues à crédit à la femme—Défense par le mari de ne pas vendre à crédit.

JUGÉ :—*Le mari n'est pas responsable pour le prix des marchandises vendues à crédit à son épouse lorsqu'il avait formellement défendu au marchand de ne point faire crédit à aucun membre de sa famille, et qu'il est admis que le mari a toujours fourni à sa famille tout ce dont elle a besoin, et que sa femme fait des dépenses extravagantes.*

Action ordinaire sur compte pour deuil.

Le défendeur allègue qu'il a formellement ordonné au demandeur de ne rien vendre à crédit à sa famille, à qui il fournit tous les besoins nécessaires de la vie, à la connaissance du demandeur et que c'est dans un but de spéculation que le marchand a fait la vente dont il réclame le prix.

A l'audition, le défendeur a admis que les marchandises en question avait servi à sa femme, et le demandeur a admis la défense d'avancer à crédit ; les goûts extravagants de la femme, et aussi que le mari pourvoyait à tous les besoins de sa famille, et que le compte des marchandises n'avait pas été envoyé avec les marchandises, mais seulement plusieurs semaines après la vente.

PER CURIAM.—Le demandeur a cité la cause de *Bonnier* v. *Bonnier* (3 R. L.), mais je ne crois que les deux cas sont analogues. Dans *Bonnier* v. *Bonnier*, les livraisons ont été faites pendant l'espace de deux ans, et le mari avait connaissance des avances faites à crédit à la femme, tandis que dans la présente espèce, le mari a ignoré la vente jusqu'au jour où il a été trop tard pour remettre les marchandises. Il est admis que la femme est extravagante et que le défendeur fournit à sa famille tout ce dont elle a besoin. Le compte ne comprend que trois emplettes qui ont été faites dans l'espace de deux semaines. Une femme peut porter des habits de deuil comme matière de luxe et même pour son plaisir. Les gens de métier, à moins d'être poussés par des sentiments d'humanité bien placés, ne peuvent s'attendre à rendre le mari

responsable, lorsque crédit a été accordé en contravention à ses ordres. Les causes de *Gibson* v. *Hervey*, 3 R. L. 460, and *Debenham* v. *Mellor*, 3 Leg. News, 129, 268, peuvent être lues à profit. Je renvoie l'action avec dépens.

Augé & Lafortune, pour le demandeur.

Mercier, Beausoleil, Choquet & Martineau, pour le défendeur.

(P. G. M.)

COUNTY COURT (COUNTY CARLETON.)

OTTAWA, Dec. 30, 1887.

Before ROSS, J.C.C.

REDGRAVE v. CANADIAN PACIFIC RAILWAY CO.

Railway Company—Responsibility for freight—Condition of contract requiring notice of loss within thirty-six hours.

The plaintiff signed a shipping bill, by one of the conditions of which it was provided that no claim for damages for loss or detention of any goods should be allowed unless notice in writing and the particulars of loss, damage, or detention were given to the station freight agent at or nearest the place of delivery within thirty-six hours after the goods were delivered. The goods were delivered 12th July, and notice of loss was not given until 25th August.

HELD:—*That railway companies may by contract relieve themselves from responsibility for loss, damage or detention of goods unless caused by negligence on their own part or that of their servants, that the condition in this case was reasonable, and no negligence being alleged, the company was relieved from responsibility.*

PER CURIAM. This was an action brought by the plaintiff to recover from the defendants the value of one case of emigrant's effects delivered to the defendants at the city of Quebec, as common carriers, to be by them carried to the city of Ottawa.

The material paragraphs of the plaintiff's statement of claim were as follows, namely:—

3. The defendants did not deliver the said case within a reasonable time.

4. When the case was delivered to the plaintiff, it had been opened and a quantity of goods and chattels taken from it.

5. This paragraph (5) contained a list of the articles taken from the case, the estimated value of which, as therein stated, was $74.25.

6. The defendants have not delivered the said goods to the plaintiff, and have refused and still refuse to deliver up the said goods, although the plaintiff has demanded delivery of the same.

7. In the alternative, the plaintiff says that the defendants or their servants have converted the said articles to their own use and wholly deprived the plaintiff of the same.

8. The plaintiff claims the value of the said goods and damages for their detention.

The plaintiff claims $75 and the costs of this action.

In the statement of defence:—

1. The defendants denied all the allegations contained in the 3rd, 4th, 5th, 6th and 1st paragraphs of the plaintiff's statement of claim.

2. The defendants said that they delivered the said case to the plaintiff within a reasonable time, in the same condition in which it was delivered to them by the plaintiff.

3. The defendants further said that it was agreed in writing between the plaintiff and them, and formed part of the contract between the plaintiff and the defendants for the carriage of the said goods, that the defendants would not be liable for and were thereby wholly exonerated from all liability for loss of or damage to any package or the contents insufficiently or improperly packed; and the defendants said that even if the articles mentioned in the plaintiff's statement of claim were removed from the said case while in the custody of defendants (which the defendants denied), the said case was insufficiently and improperly packed, and that, therefore, by the terms of the contract, the defendants were not liable for the alleged loss.

4. The defendants further said that by the terms of the contract it was further agreed that the defendants would not be liable for, and were thereby wholly exonerated from all liability for any loss or damage to any lace, jewellery, trinkets, gold, silver or plated goods of any description whatsoever, and that a portion of the goods in the fifth paragraph of the plaintiff's statement of claim

mentioned are laces, jewellery, trinkets, gold, silver and plated goods; and the defendants therefore said that even if the goods were removed from the case while in their custody (which the defendants denied) the defendants were, by the terms of the contract, exempt from all liability for the loss of the goods.

5. The defendants further said that by the terms of the contract "no claim for damages "for loss or detention of any goods for which "the company is accountable shall be "allowed, unless notice in writing and the "particulars of the claim of said loss, damage "or detention are given to the station freight "agent at or nearest to the place of delivery "within thirty-six hours after the goods, in "respect to which said claim is made, are "delivered," and the defendants therefore said even if the said goods were removed from the case while in the custody of the defendants (which the defendants denied), no such notice as required by the said contract was so served within thirty-six hours after the delivery of the goods, and the defendants are therefore not liable for the loss.

The plaintiff joined issue upon the defendants' statement of defence.

The case was tried before me, with a jury, at the sittings of this court in December, 1887.

The facts, so far as material, were shortly these:—The plaintiff, an emigrant from England, in giving her evidence, said she arrived at Quebec by one of the transatlantic steamers, and landed on the company's wharf there. She had four boxes, or cases, with her—three cases besides the one referred to in the pleadings in this action. It had been packed to the top with things in London. She herself helped in packing it and knew what was in it. She saw the case on the said wharf and applied a new label to it. She wanted to take the four cases with her, but the freight checker of the defendants told her the case was too heavy and could not be sent on the express train on which she was going to Ottawa, but would be despatched for its destination by the first freight train and that she would receive it in Ottawa in three or four days. The freight checker gave her, she said, a paper—(filed on the trial at Exhibit A)—which he told her was a receipt for the case; that he did not read it to her, nor did she read it herself. This paper was the shipping receipt note given to her by the defendants' officer. She left Quebec for Ottawa the same day—28th June, 1887. She next saw the case in question on the 12th July, 1887, at Ottawa. Her son-in-law, Alfred Cattermole, brought it from the railway station of the defendants at Ottawa. She saw at once that the case had been tampered with; the leather straps which bound down the lid were cut at one side and one end, and upon opening the case she found that many articles had been taken out of it. She then specified the missing articles and their values—amounting to $73.60. Alfred Cattermole was present when she opened the case. On her cross-examination she is shown the shipping request note, and is asked if she signed it. She said she did not think that the signature to it, "C. Redgrave," was her hand-writing; that she did not remember signing it; that she did not believe it was her signature; that it was not her signature.

Alfred Cattermole said that he went to the railway station for the box or case on 6th July, and was told by the person in charge of the freight shed there that it had not arrived yet. On 11th July he went there again to inquire after the case and was told that it had come; it had been there four days. He said he had left Mrs. Redgrave's address with the boy who was in the freight shed when he called for the case on 6th July; and that he asked on the 11th July why, if they had the case for four days, did they not notify Mrs. Redgrave, but got no satisfaction. He came back with a truck on the 12th July and took the case away, paying sixty-six cents for freight, the weight of the case as shown by the shipping request note being 200 lbs. He confirmed the evidence of the plaintiff (Mrs. Redgrave) as to the condition of the case—the leather straps cut and indications that the case had been opened.

That, in substance, was the case for the plaintiff. Evidence was then adduced at great length on behalf of the defendants, who called nine witnesses—four from Quebec, one

from St. Martin Junction and four from Ottawa, being apparently all who had any connection with the transmission and charge of the case from Quebec to Ottawa, and in Ottawa after its arrival there till delivered to Alfred Cattermole. The most material part of the evidence for the defence, stating it as succinctly as I can, is substantially this:—

Nathan Barlowe said he is freight checker of the company at Quebec. In July he was station baggage master at Quebec. Saw the plaintiff when she landed in Quebec on the company's dock. She sent baggage by the defendants' railway. Thought she had four packages. Made out the bill of lading shown him. It was signed by Mrs. Redgrave in his presence. (Filed as Exhibit E. This is the shipping request note.) The shipping receipt note and shipping request note—Exhibits A and E—were originally one paper. He tore them apart, gave one to her and kept the other now produced—Exhibit E—in the office of the company at the dock in Quebec. Mrs. Redgrave gave him the address as now shown on the shipping request note—Exhibit A—which he gave to Mrs. Redgrave. The case could not be tampered with while it was in charge of the company at Quebec. Cross-examined, he said he recognized Mrs. Redgrave (the plaintiff) as the person whom he saw at Quebec. There were 700 or 800 passengers by the ocean steamer who went by the same train in the company's railway at the same time as plaintiff went, but there were only two or three of them who had any baggage to go by freight train, Mrs. Redgrave being one of them. He told her when he gave her the receipt note that it was a receipt for her box. Did not tell her to read it. Did not tell her to look on the back of it.

It further appeared from the evidence that the case in question reached Ottawa on 2nd July and therefore was in the defendants' warehouse or freight shed there when the witness (Alfred Cattermole) called to enquire after it on 6th July, and was told by the person apparently in charge of the warehouse that it had not come. It was also proved that the only address upon the case was "C. Redgrave, Ottawa," on its arrival there, and that a postal card so addressed was deposited in the Ottawa Post Office on 7th July—but that it was not received by Mrs. Redgrave—stating that the case had come to Ottawa.

On the face of the request note delivered by Mrs. Redgrave to the defendants' officer in Quebec and on the face of the receipt note delivered at the same time by the officer to her, were respectively—amongst other things, so far as material to this action—partly written and partly printed, as follows:

Canadian Pacific Railway Company.

QUEBEC, dated June 28, 1887.

"Received from C. Redgrave the under-
"mentioned property in apparent good
"order, addressed to

"C. REDGRAVE,
"Ottawa,"

"to be sent by the said company subject to
"the terms and conditions stated above and
"upon the other side, and agreed to by the
"shipping note delivered to the company at
"the time of giving this receipt therefor.

"No. of packages and species of goods—
"Marks—Weight—lbs. Back charges. 1 case
"settlers' effects. 200."

On the back of both shipping note and receipt note were written or printed thus:—

"*General notices and conditions of carriage.*

"It is agreed and understood that the
"Canadian Pacific Railway Company will
"not be responsible for goods of any kind
"conveyed upon their railway unless re-
"ceipted for by a duly authorized agent of
"the company.

"2. Nor will they be responsible for the
"loss of or damage done to money in cash,
"jewellery, trinkets, rings, precious stones,
"gold and silver manufactured or unmanu-
"factured in any form whatsoever; nor for
"plated articles of any description, etc.

"4. Nor for loss of or damage to any pack-
"age or their contents insufficiently or im-
"properly packed, etc.

"5. Nor will the company be liable for loss
"or damage done to goods . . . ware-
"housed for the convenience of the parties
"to whom they belong . . . ; and in all
"cases where herein not otherwise provided
"for, the delivery of the goods shall be con-
"sidered complete and the responsibility of
"the company shall terminate when the

" goods are placed in the company's sheds or " warehouse...at their final destination. The " warehousing of all goods will be at the " owner's risk and expense, etc.

" 12. That no claim for damages for loss " of, or detention of any goods for which the " company is accountable shall be allowed " unless notice in writing and the particu- " lars of the claim of said loss, damage or " detention, are given to the station freight " agent at or nearest to the place of delivery, " within thirty-six hours after the goods in " respect of which said claim is made are " delivered."

The first notice of the plaintiff's claim for loss and damages given to the defendants was by the letter of her solicitor dated 25th August, 1887.

The following were the findings of the jury as to the facts, namely:—

1 Q. Was the box produced in court properly secured when delivered to the C.P.R. Co. in Quebec? A. Yes.

2 Q. Were the goods enumerated by the plaintiff in her evidence in the box when delivered to the C.P.R. Co. at Quebec? A. Yes.

3 Q. Was the box opened while it was in the custody of the C.P.R. Co.? A. Yes.

4 Q. Did the plaintiff sign Exhibit E filed in this cause? A. Yes.

5 Q. What damages were sustained by the plaintiff? A. $70.

6 Q. If the plaintiff's goods were abstracted from the box, at what place in the transit was this done? A. Ottawa C.P.R. freight shed.

Mr. W. L. Scott contended that the verdict and judgment must be entered for the defendants. The jury having found as a fact that the plaintiff signed the shipping request note, and that the officer of the defendants at the same time delivered to her the receipt note, these documents constitute the contract between the plaintiff and the defendants. The plaintiff is bound by the conditions endorsed upon the shipping and receipt notes, so far as these are applicable to her case. Section 12 of these conditions exempts the company from all liability for loss, damage or detention, unless notice in writing and the particulars of the claim are given to the station freight agent at the place of delivery within thirty-six hours after the goods are delivered. The plaintiff failed to give such notice. The goods were delivered to the plaintiff on 12th July. The first notice of the alleged loss given to the defendants was the letter of plaintiff's solicitor, dated 25th August. Besides, the notice is defective, as it contains no particulars of the claim for loss, damage or detention. Second. The destination of plaintiff's case was Ottawa. The jury have found as a fact that the goods were abstracted from the case in the defendant's freight shed at Ottawa; but on these facts the defendants are not responsible for damages to the plaintiff, inasmuch as the goods were then in their custody as warehousemen, and not as common carriers, their liability as carriers ceasing the moment the goods were taken into their warehouse at Ottawa. Warehousemen are not liable except for gross negligence. Such negligence was not proved by plaintiff—in fact, no negligence was established on the part of the defendants and could not be proved, as negligence is not alleged in plaintiff's statement of claim. Therefore, under section 5 of the the conditions endorsed on the shipping note the defendants are not liable for the loss of the plaintiff's goods. 3rd. The defendants are discharged from liability for the loss of the goods under section 2 of the conditions, as nearly all the goods, the loss of which was proved by the plaintiff, are goods of the kind for loss or damage to which, the defendants stipulated with the plaintiff they were not to be responsible. Mr. Scott cited in support of his contention:—Mason v. G. T. R. Co., 37 U. C. R. 163; Fitzgerald v. G. W. R. Co., 39 U. C. R. 525; Chapman v. G. W. R. Co.; *in re* Webb, 8 Taunt. 413; Penton v. G. T. R. Co., 28 U. C. R. 367; Mayer v. G. T. R., 31 U. C. C. P. 248; G. N. R. Co. v. Nesbitt, railway C. H. R. 139; Kirby v. G. W. R. Co., 18 L. T. R. 658; Parker v. G. Junction R. Co., 4 M. & W. 744; Brown v. B. B. & G. R. Co, 7 U. C. C. P. 191; Vogel v. G. T. R. Co., 2 O R. 197; 10 A. R. 162; 11 S. C. R. 612; O'Neill v. G. W. R. Co., 7 U. C. C. P. 203; Lapointe v. G. T. R. Co., 26

U. C. R. 479; O'Rourke v. G. T. R. Co., 23 U. C. R. 427; Bate v. C. P. R. Co., 14 O. R. 625; Hamilton v. G. T. R. Co., 23 U. C. R. 600; Lewis v. G. W. R. Co., 5 H. & N. 867.

Mr. McVeity, for the plaintiff, argued that the defendants could not make such a contract as that contended for on their behalf, as it was unjust and unreasonable; that their incompetency in that respect applied to all the conditions endorsed on the shipping request note; that the alleged contract was not read or explained to the plaintiff, nor was she told that there was anything in it which would be binding on her. On the contrary, she was told that it was merely a receipt for her case of goods, a statement clearly calculated to mislead the plaintiff, which manifestly was the fact. That the surrounding circumstances at the time of the delivery of the shipping and receipt notes must be taken into consideration in determining whether there was a contract. There is a wide difference between the contract made by railway companies in England and the contract alleged to have been made by the defendants with Mrs. Redgrave—the limitation in the former case being to a specific sum, while in the latter what is claimed is absolute immunity from liability. That several of the cases cited by Mr. Scott as to exemption from liability do not apply in this case. That as to the contention on the part of the defendants as to their non liability, because, as they urge, they were warehousemen after the arrival of the goods in their warehouse at Ottawa, the thing has no foundation in fact. First, they failed to give notice of the arrival of the case at Ottawa, though Mrs. Redgrave proved that she affixed a ticket at Quebec to the case specifying the street and number of her son-in-law's abode. And then the defendants' own evidence showed that the case reached the defendants' warehouse in Ottawa on the 2nd July, while Mr. Cattermole on calling for it on 6th July, was told that it had not come, and it was not secured by the plaintiff till 12th July—10 days after it should have been delivered to the plaintiff.

Mr. McVeity referred to the following authorities:—Foster v. Mackinnon, L. R., 4 C. P. 704; Pollock on Contracts, 3 Ed., p. 428; Simons v. G. W. R. Co., 2 C. B., U. S., 622; Henderson v. Stevenson, 2 H. L. Sc. 70; Harris v. G. W. R. Co., 1 Q. B. D. 515; Steel v. G. T. R. Co., 31 U. C. C. P. 260; Smith's L.C., p. 431 (Am. ed.); Brown v. E. B. & G. R. Co., 7 U. C. C. P. 191; Shepherd v. Bristol & Exeter R. Co., L. R. 3 Ex. 189; Giles v. Taff Vale R. Co., 2 E. & B. 822; Patscheider v. G. W. R. Co., 3 Ex. D. 152; Redfield on Common Carriers, p. 93 (1st ed.)

Mr. Scott, in reply, contended that the cases cited by Mr. McVeity did not displace the case made by the defence. The jury have found a contract in writing. The burden of proof to get rid of that contract is on the plaintiff. She must excuse herself, which she has not done. In all the cases cited on behalf of the plaintiff, there was the absence of a written contract. The present case is different. It is not the duty of a carrier to give notice to owner of goods that they have arrived, or to deliver them to him except when he comes for them. (Wise v. G.W.R. Co., 25 L.J.R. 208; G.N.R. Co. v. Swaffield, 9 Ex. 132.)

[To be concluded in next issue.]

*COURT OF QUEEN'S BENCH—MONTREAL.**

Imputation of payment—Note given as fraudulent preference—Knowledge by trustee.

Where J. R., trustee to an insolvent estate, is member of a firm holding insolvent's note, given it in illegal preference, and where, the purchasers of the estate having appointed the insolvent their agent for the purpose of realizing its assets, the latter pays the proceeds to J. R.:—

Held, On suit brought by trustee *ès qualité* against purchasers for balance of price, that the moneys so paid will be imputed on account of the debt due trustee by purchasers;

2. That the knowledge by J. R. of the illegal preference, which came to him as a member of the firm, is a knowledge by him in his capacity of trustee.—*Ross & Paul et al.*, Dorion, Ch. J., Tessier, Cross, Church, JJ., Nov. 22, 1887.

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

Préférence entre créanciers privilégiés.

Jugé, Que le locateur qui a saisi doit être payé sur le produit de la vente des effets garnissant les lieux loués par préférence aux frais d'administration, etc., encourus par le curateur nommé à la cession faite par le locataire subséquemment à la saisie-gagerie, à l'exception des frais pour la conservation et la vente de ces effets.—*De Bellefeuille & Desmarteau*, Tessier, Cross, Baby, Church, Doherty, JJ., 22 nov. 1887.

Procédure—Appel de la Cour de Révision.

Jugé, Que lorsqu'il y a changement substantiel dans le jugement de la Cour de première instance par la Cour de révision, il y a lieu à l'appel quoique le jugement *a quo* condamne la partie qui a inscrit en révision.—*Fraser & Brunette et vir*, Tessier, Cross, Baby, Church, Doherty, JJ., 16 novembre 1887.

Preuve testimoniale.

Jugé, Que la preuve d'une condition de garantie dans une vente pour plus de $50 ne peut être faite par témoins.—*Tassé* v. *Ouimet dit Bastien*, Tessier, Cross, Baby, Church, Doherty, JJ., 16 novembre 1887.

Appel de jugement interlocutoire—Procès par jury—Forclusion.

Jugé, Qu'à défaut par la partie qui a demandé le jury de procéder sur cette demande, la partie adverse a droit d'obtenir la permission d'inscrire la cause pour enquête en la manière ordinaire—371 C.P.C. Qu'une motion signifiée mais non présentée à la Cour n'a aucun effet.—*McLeish* v. *Dougall et al.*, Tessier, Cross, Baby, Church, Doherty, JJ., 16 novembre 1887.

Dommages—Faute mutuelle—Cause déterminante—Responsabilité.

Jugé, Lorsque des dommages ont été causés par le quasi-déiit du défendeur et qu'il y a eu faute de part et d'autre, la cour devra rechercher la cause principale et immédiate de l'accident, et condamner son auteur à payer les dommages soufferts par l'autre partie.—*The Canadian Pacific Ry. Co. & Cadieux*, Dorion, J.C., Tessier, Cross, Baby, JJ., (Cross, J., *diss.*,) 24 septembre 1887.

Permission d'appeler d'un jugement interlocutoire—Preuve avant faire droit.

Jugé, Que la Cour n'accordera pas la permission d'appeler d'un jugement interlocutoire ordonnant preuve avant faire droit, lorsqu'à une action, où procès par jury doit avoir lieu, défense en droit est faite à une partie de la déclaration alléguant des faits généralement nécessaires à la demande, quoique le développement de ces faits sur certains points peut être inutile.—*The Rasconi Woolen and Cotton Manufacturing Co.* v. *The Lancashire Fire Insurance Co.*, Tessier, Cross, Baby, Church, Doherty, JJ., 17 novembre 1887.

Délai pour appeler à la Cour Suprême.

Jugé, Que, le délai du statut passé, lorsque permission est demandée d'appeler à la Cour Suprême, elle sera refusée s'il n'est pas démontré que des circonstances spéciales ont retardé l'appel. S. R. C., chap. 135, ss. 40 et 42.— *Massue et al. & La Corporation de la Paroisse de St. Aimé*, Tessier, Cross, Baby, Church, Doherty, JJ., 22 novembre 1887.

Cautionnement pour frais—Discrétion.

Jugé, 1. Lorsque la partie ayant droit au cautionnement pour frais a en sa possession des biens, appartenant à la partie adverse, suffisants pour garantir ses frais, que cette possession doit tenir lieu du cautionnement ;

2. Que la question de la suffisance de cette garantie des frais est dans la discrétion du tribunal comme toute question de frais ;

3. *Semble*: Que lorsqu'une partie en cause meurt, après avoir donné cautionnement pour frais, son héritier, quoique résidant à l'étranger, peut reprendre l'instance sans fournir un nouveau cautionnement.—*Boxer* v. *Judah*, Tessier, Cross, Baby, Church, Doherty, JJ., 17 novembre 1887.

Appel au Conseil Privé—Exécution provisionnelle du jugement.

Jugé, Que le dossier doit être remis à la Cour Supérieure pour l'exécution du jugement lorsque l'appel n'a pas été logé au Conseil Privé dans les six mois suivant la date du jugement de la Cour du Banc de la Reine accordant l'appel. C. P. C. 1181.—*Allan & Pratt*, Tessier, Cross, Baby, Church, Doherty, JJ., 22 novembre 1887.