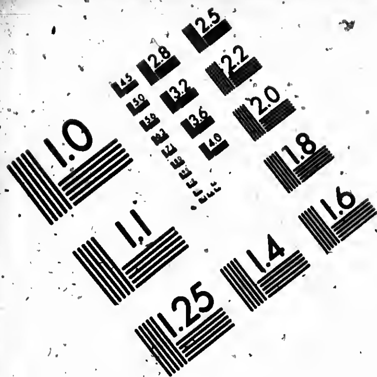

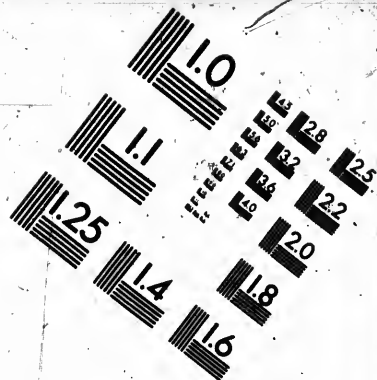

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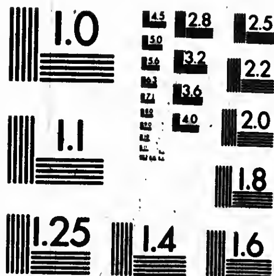

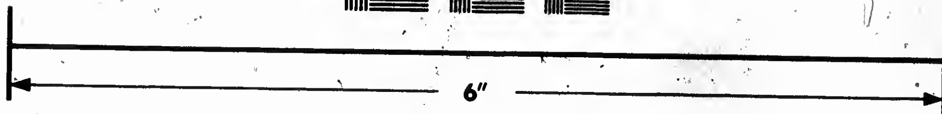

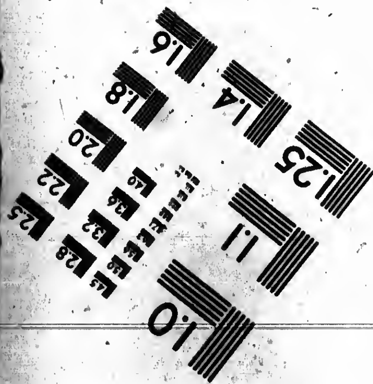

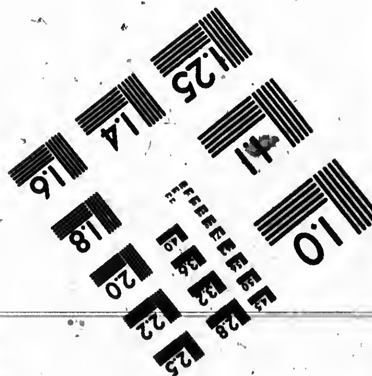

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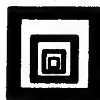

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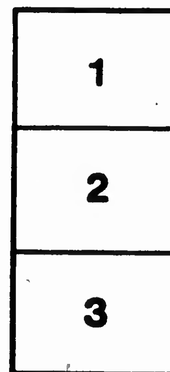

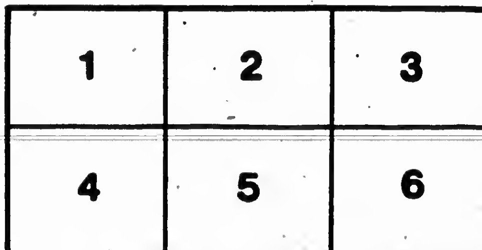

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A SYNOPSIS

OF THE

LAWS OF LETTING AND HIRING

OR THE

Contract of Lease,

IN

LOWER CANADA:

SHEWING

The Rules governing this Contract in the Letting and Hiring of Things, Lands, Houses, &c.; the Rights and Obligations of the Lessor and Lessee, Landlord and Tenant; the Dissolution of Leases and the causes which give rise thereto; Tacit Relocation, or the continuing of Leases without special agreement;—and in the Letting out of Labor or Industry, as applicable to Servants, Laborers, Apprentices, Journeymen, Clerks, Seamen, Carriers, Porters, Forwarders, Affreighters; the Contract of Affreightment, Contracts of Building, &c. and the Privileges and Responsibilities of Workmen and Contractors:

BROUGHT DOWN TO THE PRESENT TIME,

AS AFFECTED BY LOCAL STATUTE LAW AND THE JURISPRUDENCE OF THE COUNTRY (SO FAR AS KNOWN);

WITH MARGINAL REFERENCES:

CALCULATED AS BEING USEFUL TO GENTLEMEN CONNECTED WITH THE LAW, SMALL CAUSE COMMISSIONERS, PROPRIETORS, MERCHANTS, MECHANICS, AND OTHERS.

BY ALEXANDER GORRIE,

Notary Public, and Registrar of the County of Terrebonne, L. C.

MONTREAL:

PRINTED BY LOVELL AND GIBSON, ST. NICHOLAS STREET.

1848.

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ABBREVIATIONS OF AUTHORITIES, &c.,

CITED IN THIS WORK.

C. C. L.................Civil Code of Louisiana.
C. N.....................*Code Napoléon, (Civil).*
C. Or.....................*Coutume d'Orléans.*
C. P......................*Coutume de Paris. Ferrière.*
C. S. Q..................*Conseil Supérieur de Québec.*
Cyc. Com...............Cyclopædia of Commerce, by Waterston. Edin. 1843.
D. D......................*Dictionnaire de Droit. Ferrière,* 1771.
Ency. Méth. Juris....*Encyclopédie Méthodique, etc., Partie Jurisprudence.* Paris, 1783. 26 vols. 4to.
f...........................and following numbers, &c.
Frem......................*Freminville.*
Lac........................*Rousseau de La Combe. Rec. Jur. Civ.*
Pand. F. on C. N....*Les Pandectes Françaises,* by Riffé Caubray and Delaporte on the Code Napoléon (Civil). 15 vols., 8vo. Paris, 1802-6.
P...........................Pothier, 4to Edition.
Rep. J....................*Repertoire de Jurisprudence.*
Rev. Lég.................*Revue de Législation et de Jurisprudence.* Commenced in Montreal, in 1845.
Rev. Stat................Revised Acts and Ordinances of Lower Canada, 1845.
22d, 23d, &c...........22d and 23d Clauses, &c.

It is presumed that the other references will be easily understood.

A SYNOPSIS

OF THE

LAWS OF LETTING AND HIRING.

CHAPTER I.

Of the nature of the Contract of Hire.

Lease or hire is a Synallagmatic contract,* to which consent alone is necessary, and by which one party gives to another, the enjoyment of a thing, or his labour, at a fixed price. It is governed by the rules of natural equity in common with other agreements, and by those hereafter specified, and is not subjected to any particular form. (P. Louage, 1 2, & 4.)

To this contract, as to that of sale, three things are absolutely necessary, to wit: The thing leased, the price, and the consent. (3, 6 f.) Therefore, if the thing does not exist at the time of the bargain—if the price is not certain and determinate, or is incapable of being ascertained without either party having an influence on it after the bargain,—or if any of the parties is incapable of giving a legal consent through want of age, folly, being so far inebriated as not to have the use of one's senses,—if one of the parties is a woman under marital authority, and is not duly authorized by her husband or by the judge on his refusal—in any of these cases there is no contract. (37 f.) (P. Ob. 49. 71 f. 82. 52.)

Although a written deed is not necessary to the validity of a Contract of Lease, yet as testimonial or oral proof is not allowed in contracts, except in commercial cases, where the amount claimed is over £4 3s 4d, or in the Commissioners' Court, £6 5s wherever a party does not wish the contract to depend on the oath of the other, he should have it reduced to writing. Nevertheless, in case there should be no written contract, and the value of the rent should be over the amount which may be proved by witnesses, the proprietor may institute the action *de factum*, and prove the detention or usurpation of the thing by the opposite party, and recover the value of the rent, or of the (P. Louage, 46, 2.) (186.) (Danty p. 308, 313.)

---

*A Synallagmatic Contract is one in which there are obligations to be performed by opposite parties, while unilateral contracts are binding on one only; such are promissory notes, &c.,

D. D. Bail verbal. — Rep. J. Domestiques. Nouveau Manuel des Notaires, p. 565. P. Ob. 727. Con. Rente 133. 138. 141. Livonière, p. 48 f. Ins. Conv p. 178.

fruits gathered according to estimation. But otherwise, when there is no written contract and the parties disagree about the price, when the lease is of a house or of land, and the lessee is in occupation, the oath is generally deferred to him; but if the occupation has not commenced, the oath is deferred to the party contesting the claim. When the amount of wages, and the payment, for the past or current year, or the conditions of the engagement, are in dispute between a servant and master, the master's books, if he keeps any, are sufficient along with his oath; if not he is believed solely on oath, provided the wages are reasonable. If the heirs of the master have no knowledge as to the contract and wages, the oath is then deferred to the servant. These rules do not preclude the production of better proof when practicable. (*See further infra.* c. 3, s. 1.)

Rep. J. Quittance. Renauldon p. 649.

As in all other annual rents, the receipts for the three last years cause the payment of the former years to be presumed, and the price of the lease of a farm cannot be demanded after five years.

Toullier, l 3, t. 3, c. 8, s. 2, No. 32. Delmas. Duranton. Preuve. No. 145, f. 161.

Like almost all other synallagmatic contracts, when it is reduced to writing under private signature, it should be made in duplicate, each party keeping a counterpart; but if the lessee is already in occupation of the premises, the lessor will have recourse for his rent, although the only original should be in the latter's possession; and should one party signify to the other his acceptance of a written contract of lease, made single, and in possession of the opposite party, the Court would most probably cause it to be respected.

Prevôt de la Jannes, No. 526.

As there are promises of sale, so there may be promises of lease, and where earnest is given, the party giving the earnest may draw back, by forfeiting the earnest, and the opposite party by returning the earnest and as much more; excepting that when the proprietor wishes to use the house himself, he forfeits nothing for drawing back. (*See infra*, c. 2, s. 6.) There are certain leases of farms, &c., where the lessor and the lessee divide the fruits between them. This is a kind of partnership, and is subject to its rules generally, but in regard to the enjoyment of the property, and the work or industry to be furnished by the parties, it is the same as in the contract of lease

P. int. t. 19 19 c. or. 1 to 3. P. Louage, 1, 2, 3, 6, 22, 27. — 373, 395, 397, 403.

There are two species of letting and hiring; that of things, and that of labor or industry. To let out a thing, is a contract by which one of the parties binds himself to grant to the other the enjoyment of a thing, during a certain time, for a certain stipulated rent or hire, which the other agrees to pay him. He who leases out a thing is called the lessor, and he who takes the lease the lessee; which answers in leases of immovables to the terms, Landlord and Tenant. To let out labor or industry is a contract by which one of the parties binds himself to do something for the other, in consideration of a certain price agreed upon between them. They will be treated of more particularly under two separate chapters.

CHAPTER II.

Of Letting out Things.

SECTION I.

What things we may Lease or Hire, and of the effects of the Lease.

All things may be leased out, whether movable, or immovable, corporeal, or incorporeal, excepting those which are consumed in the using, as money, wheat, &c., and those which exist in favor of particular persons only, as a right of habitation; nevertheless, an usufruct may be seized, leased, sold, or hypothecated. Spiritual functions cannot be leased, but their revenues may. Predial or land servitudes cannot be leased, separate from the heritage in favor of which they exist. The thing leased may be indeterminate, as it may be a horse, without specifying which one.

P. Louage, 9 to 19.

8.

He who possesses a thing belonging to another may let it to a third person for the purposes to which it is generally applied only; and in these cases he warrants the enjoyment of it against the claim of the owner. Tutors and other administrators, may lease the property entrusted to them provided it is done without fraud, for no longer a term than the law or their specific power allows them, and without anticipation, which means generally, that it should not be made more than six months before the expiry of a former lease, this however, is not laid down as a certain rule; there may be cases where it may be advisable to lease a year, or even two, previous to the expiry of a former lease, and, in such cases, necessity, and the general custom of the locality should be followed. The husband may lease his wife's private immovables for a term of nine years, if they are situated in country parts. I am not aware if the disposition of the Custom of Paris, which authorise him to lease those situated in the city of Paris, for a term of six years, obtains in any of the cities and towns of Lower Canada. In all other cities than that of Paris within the jurisdiction of its Custom he could only make a one year's lease, and it is possible that this rule may be generally observed. As with the leases of other administrators, it should not be made by anticipation; but if the community of property subsists between the husband and wife after the commencement of the new lease, and without any prospect of the community being speedily dissolved by death or sentence, this rule will not be observed rigorously.

43.

20.

Lacombe, Bail, s. 5, no. 2.

P. Puissance du Mari, 90 to 97.

Art. 227.

When the term of lease has not been agreed upon, if the object is one of which the fruits or revenues are gathered but once a year, it is supposed to be made for a year. In country parts the period for the leases of dwelling houses, are generally the 1st of May, and the 29th of September. If it is of a shop,

P. Louage, 29, 30. *Infra*, c. 2, s. 7.

the term is reputed to end on the first of May, next ensuing. If of furnished rooms, or of movables, if the price has been fixed at so much a year, a month, or day, &c., it is supposed to be made for the time which regulates the rate.

D. Droit. *Emphytéose* 14th clause and fol.

All leases for a fixed term of upwards of nine years are called emphiteotic leases, and when they are made for a price payable in money, give rise to the mutation fine in favor of the seigneur, (*lods et ventes, &c.*) but not so if made for a share of the fruits of the object. They are regarded as a species of alienation, therefore they who cannot sell the object cannot make an emphiteotic lease of it. It is of their essence that a certain annual charge be paid for them. When money is paid in hand for an emphiteotic lease, for ten years, or upwards, (some authors say nine years), it so far resembles the contract of sale as to make it subject to the lineal redemption, which is a right inherent to any lineal relation of the lessor to take the lease or purchase to himself on the same conditions as the lessee or buyer, within the year and day. The usufruct of an immovable, leased for more than nine years, may be seized and sold as may an immovable itself.

Cust. Paris, a 149.

D. Droit. *loc. cit.* 21st cl.

D. Droit *loc. cit.* 2d to 4th clauses.

Leases of immovables cannot be made for a definite term, exceeding ninety-nine years; but they may be leased indefinitely for the lifetime of the lessee and for the lives of his children and his children's children. In cases where *the issue* is referred to in the lease, it embraces those only who adhere to the lessee's succession. Although, as already mentioned, certain emphiteotic leases of seigniorial or feodal lands give rise to *lods et ventes, &c.*, yet those made for the lessee's lifetime do not.

Ord. 1667 tit. 19, a 10. P. Louage, 376 and fol.

Leases may be made by the Judge of property, in which corporations or minors have an interest, although these are generally made by their Administrators or Tutors. In important cases Tutors and Curators should be authorized by the Judge on an advice of the relations and friends of the minor, or person interdicted. The ordinary power of Administrators in leases are similar to those enjoyed by husbands over their wives property, except that they should never grant a long lease without authority of the court, particularly if the minor is near his majority. Judicial leases are almost entirely similar to others, in the rights they confer on the different parties.

When property is held in common, between several persons they may lease it by licitation, and a minor co-proprietor may take part therein, when the lease is not for over nine years, through his tutor, or by himself if he is emancipated, without any special authority being necessary from the Judge, to that effect.

Besides the effect of the Contract of Lease already alluded to, the lessor and lessee enjoy certain rights, and are subject to certain obligations, which will be more particularly specified in the six following Sections.

SECTION II.

Of the Obligations of the Lessor.

The lessor is bound, from the very nature of the contract and without any stipulation to that effect,

1st. To deliver the thing leased to the lessee.

2nd. To maintain it in such a condition as to serve the use for which it is leased and

3rd. To cause the lessee or his sub-lessees the peaceable possession of the thing, during the term of lease.

P. Louage, 53 to 55. 64 fol. 106 f. 75 f. 89.

Movables should be delivered where they are at the time of making the lease, unless from the custom of the place or the nature of the thing, it can be inferred otherwise. With regard to houses or farms, if the time of delivery has not been agreed upon, possession should be given at the commencement of the first ordinary term next ensuing, according to the custom of the locality; and with regard to other things, it should be whenever required by the lessee. If the lessee makes no demand for delivery the lessor may summon him to take possession, in default of his doing which the Judge may order the rent to run on in the meantime.

56 to 58.

The lessor is further obliged to deliver the thing in good condition and repair, according to its destination; thus, a dwelling should be proof against rain; the doors and windows of a house or store, should be reasonably secure against the intrusion of robbers, &c. He ought to make, during the continuance of the lease, all the repairs which may accidentally become necessary excepting such as are incumbent on the lessee, as will be shewn in the 4th Section of this Chapter. Repairs which unforeseen events may render necessary, are at the expense of the lessor, even although they be among the number of those which are usually incumbent on the lessee. The cleaning of wells and privies are also at his expense, unless the contrary has been stipulated, or unless the wells have been dirted or damaged by the lessee. If the lessor fails in those obligations, the lessee should call upon him to fulfil them, and on his failing to comply, the Judge may, on proof of the necessity of the repairs, order the lessor to make them forthwith at his own expense, and if the order is not complied with, the judge may, on petition to that effect, and proof as to the necessity, authorise the lessee to make them at the lessor's expense. The refusal to comply with the order on the part of the lessor may even cause the rescission of the lease; the lessee in that case preserving his action for damages.

D. D. *Bail à Loyer.* P. Louage, 106. Ency. Juris. *Bail* p. 673. P. Louage, 219 to 222. Act 3, W. 4., c. 1., s. 2 to 4. Ord. 2 Vic. c. 47.

The lessor is responsible that the thing is of a proper quality, if it is not evident that it is not so. He guarantees the lessee against all its vices or defects, which may prevent its being used, even although he may not have known of their existence, and whether they have arisen since or before, provided they do not arise by the lessee's fault; and should any damage result to the lessee from the defect he has recourse for indemnity.

D. D. *Louage des Meubles, etc.* P. Louage, 53, 108, 112 to 120. 328.

81 fol.
86 fol.

If the lessee is evicted, whether the cause has arisen previous to, or during the lease, and whether it is through a forced sale on account of the lessor's debts, or otherwise, the lessor should indemnify the lessee for the loss occasioned him by the interruption. (This does not affect the lessor's right to dissolve the lease of a house for his private use.) See *infra*, S 6.

75, 77 fol.
P. Int. t. 19.
C. Or. No. 9, 17.
Pigeau II. p. 464.
Act 3 W. 4. c. 1. s. 5.
P. *Communauté*, 220 to 223.
P. Louage, 140, 141, 15.

Generally, the lessor cannot make any alteration in the form of the thing leased, without the lessee's consent. When any necessary and urgent repairs are required, the lessor may proceed in justice against the lessee in case of the latter's refusal, and cause his acquiescence, under pain of arrest and damages; but if more than six weeks are employed in making the repairs, the lessee may claim damages for the extra time; and if the lessee has been deprived of the use of the whole or of part of the premises during the time of the repairs, a proportionate share of the rent should be remitted him, care being taken in distinguishing whether the lease is of a house, &c., the fruits of which were gathered from day to day successively, or of a farm, &c., the revenues of which are reaped only by seasons, and allowance made accordingly.

P. Louage, 129, 131.

The lessor is obliged to indemnify the lessee for all necessary and extraordinary disbursements made by him for the thing leased; but if the repairs to houses have been merely useful without being necessary, the lessee has no claim for reimbursement, but he has the privilege of carrying away the improvements if he can do so without hurting the property leased.

83-
P. *Vente* 259, 250 fol.
P. *Bail à Rente* 48.
P. *Vente* 253 to 256.
309.

If in the lease of a farm, the premises have been stated of a greater extent than they really are, but without giving the dimensions and bounds, the lessor is obliged to deliver the quantity expressed, or suffer a proportionate diminution in the rent, and if there exists more than is specified, the lessee may either give the supplement of the rent, or recede from the contract should the overplus be more than a tenth part of the declared extent. But when the dimensions and bounds are given, the lessor has no claim for the overplus; and the lessee can demand a diminution in the rent, only when it is less by a twentieth part than the quantity mentioned; saving contrary stipulations. In those cases regard is had to the totality of the contract*.

P. Louage, 211.
C. P. 149
D. D. *Emphytéose*, 28th clause
Ency. Juris. *Bail* p. 684.

The lessor and not the lessee, unless there be a stipulation to the contrary, bears all the real charges imposed on the property leased, such as municipal taxes, ground rents, &c., excepting in emphiteotic leases, when the lessee meets those charges. (With regard to the *Dimes*, payable by Roman Catholics to their curates, see Section 4.)

P. Louage 81 to 88 287. 91.
P. Vente, 94

The lessor is not bound to guarantee the lessee against disturbances or interruptions caused by persons not claiming any right of ownership in the property, but the lessee has his action against the disturber. If the disturber pretends to a right of ownership in the thing leased or any species of servitude on it, or if the lessee is cited to answer the complaint of the claimant,

*These rules are similar to those observed in the Contract of Sale.

he may call the lessor in warranty and be dismissed from the suit if he requires it, by naming the person under whom he holds, unless the lessee was aware of the claimant's rights before leasing, and the lessor was ignorant of them.

A wife, after the dissolution of her marriage, is bound to carry out the leases made by her husband of her property; provided they have not been made in fraud or by anticipation; and provided that the husband's ordinary power, in this respect, has not been restricted in their marriage contract. For the ordinary power of the husband, as Administrator of his wife's property, see *supra*. c. 2, s. 1.

C. P. à 224. P. Louage, 306. 316. *Supra* c. 2., s. 1. P. Puis. du Mari. 93 f.

Section III,

Of the Rights of the Lessor.

In verbal leases, and those made under private signature, the lessor, and subsidiarily the sub-lessor, have a right of pledge, and of attachment, *suite*, in the hands of others, on the furniture and effects of the tenant and sub-tenant, which serve to garnish, stock, or furnish the premises leased, including wares, goods, grain, agricultural produce and utensils, &c., according to the nature of the propertyleased, for three terms and the current one at their respective rates of possession, if the lease is of houses, &c., and for a year if of farms. If the lease is drawn out by a Notary, or acknowledged in justice, the whole of the rent afterwards falling due is thus privileged. The privilege is exercisable on furniture, &c., leased, lent, or sold, by third persons to the lessees, and found on the premises, but not on those transiently or accidentally on the premises, such as the baggage of a traveller, work or things sent to a workman for repairing, effects lodged with an auctioneer for sale, &c.;—nor on the papers, accounts, jewellery for use, &c., of the tenant, or the jewellery or apparel of women, nor on goods sold to the lessee without a term of credit, if the seller expected prompt payment, and claims them without delay; provided they are not broken upon; nevertheless creditors of bankrupts under our present bankrupt laws, are not allowed to revendicate goods sold to them, but they may stop them *in transitu*. By a judgment of the Court of Queen's Bench, the privilege may be exercised on the goods on a quay, for the rent of the quay. The lessee is entitled to retain the following articles in all cases of execution, viz.:—the bed, bedding, and necessary wearing apparel of himself and family, one cow, three sheep, one hog, one stove and one cord of firewood; to be chosen by him out of any greater number of those things he may have; he should also be left his unpublished manuscripts. The lessor's privilege takes precedence of any other claim, saving nevertheless, the costs of justice; the costs of interment, (not all the funeral expenses,) of the lessor and his family, when there is no other source from which they can be made good; and government taxes. Those who have furnished horses or stock,

Pand. F. on C. N., 2102. Lac. *Bail* s. 2. no. 1. Louage, no. 6. D. D. *Bail à Loyer*, 22d. P. Int. t. 19 c. or. 30 f. Louage, 226 f. 245 f. 249, 233 f. 253, sec. 276, Pigeau, I., p. 682. C. P. 171. P. Louage, 241 f. Rep. J. t. 2, p. 23, *Bail*. Rev. Lég. 2e ann. p. 317.

P. *Louage*, 252 to 256. Lac. *Bail* s. 3, no. 3. Ord. 2 Vict. (3,) c. 28.

Ency. Meth. *Bibliothèque*.

Pigeau, I., p. 683 to 685, 619

which have helped to work the farm leased; those who have furnished or repaired the utensils, &c., and those who have advanced money for those purposes, are also, according to Pigeau, privileged on the proceeds of those things before the lessor, provided they were furnished, repaired, or lent during the lease, but not if the lessee possessed or enjoyed them so, previously: Pothier, however, ranks those claims after that of the lessor.

P. *Proc. Civ.* P. 4, c. 2, s. 2, à 7, § 2. Pand. F. l. c. Act 9 Vict. c. 2, s. 16. (Temporary.)

Harvesters on the fruits gathered by them; ploughmen on the fruits of the land ploughed by them, for not over six months wages; carters for their carrying, and dyers for dying, when the objects of their work remain in their own hands; distillers' stock, and utensils for government duty, and penalties incurred by distillers as such; all go before the lessor. (Authors, however, differ as to the ranking of those different claims.)

P. *Louage*, 257 f. 276, C.P. 170, 171. Rep. J. t. 2, p. 23.

In the exercise of his privilege the lessor may seize the objects subject to it before the lessee takes them away, or within a short delay afterwards*, unless the lessor has allowed them to be carried away after the expiry of the lease, or unless they have been sold by legal auction after being carried away; but before he can seize the effects in the hands of a third person, he is bound to prove that the lessee has not left sufficient effects in the premises to secure the rent. The attachment, *saisie gagerie*, for warranty of the landlord's rent, may be made before judgment, but for the amount then actually due or payable only; yet no sale can be effected by the lessor before judgment. The lessee or whoever is left as guardian in charge of the effects seized, is responsible for their production, under pain of personal arrest.

Rev. Lég. 1re an. p. 95. Pand. F. on C. N. 2102, no. 103.

Rep. J Gardiens.

Ency. Meth. Juris. *Bail.* p. 768.

The lessor cannot hinder the lessee from disposing of the effects on the premises provided he leaves enough to warrant the rent; nevertheless, if the lessee's creditors seize the effects, the lessor may oppose their sale, and demand a *main levée* of the seizure, unless the creditors oblige themselves with good security, to satisfy the lessor's demands, present and future.

Rev. Leg. 2d an. p. 317.

By a judgment in the Court of Queen's Bench of Quebec, a promissory note given in payment of rent, does not operate a novation of the lessor's privilege.

p. 440. C. C. L. 2667.

A new landlord acquires no privilege, on things seized by a former landlord, to the latter's prejudice.

D. D. *Bail à Loyer.*

A payment made in anticipation by the sub-tenant to the principal one, does not liberate the effects from the lessor's claim.

P. Proc. Civ. l. c. and c. 4. 2d append. *Louage*, 257. *Vente*, 320. Int. t. 19, c. or. no. 49. Domat. 2, p. 41.

If the lessee decamps without paying his rent, the lessor may, on authority from the Judge, cause the house to be opened, after any certain period, and an inventory of the effects to be taken, to be afterwards proceeded upon for his payment.

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*I have been unable to find in any authority, the term allowed for seizing the objects in a third person's hands. In Orleans it was eight days for rents of houses, and forty for those of farms. In Louisiana it is fifteen; in Brussels forty. In such cases, the custom of the place will generally obtain. I believe it is eight days for the rent of houses in Lower Canada.

The dung and manure on a farm, which are destined for enriching the soil thereof, belong to the proprietor, and the lessee should not dispose of them; but custom will influence considerably here. *Rep. J. Fumiers.*

P. Louage, 196. Troplong, Vente 666, C. Or. From t. 5, p. 344.

I believe that the lessor has no right to post up placards on a house leased, for its lease or sale, against the lessee's will:—Some notaries take the precaution to insert the permission in the deed. He may nevertheless visit or cause to be visited, the premises, when necessary for their good keeping.

Ency. Meth. Juris. *Bail* p. 672.

When a lease of immovables has been made to a trader, who afterwards becomes bankrupt, for more than one year originally, the lessor is privileged for the rent and its incidental expenses on the bankrupt's effects found on the premises, if the rest of his effects are insufficient, to the end of the current yearly term, provided the Commission of Bankruptcy has issued, three months previous thereto; at the end of which term, the lease is cancelled, unless the assignee chooses to continue it for the benefit of the creditors, on paying the lessor's claim for the whole term of lease. *(Temporary).*

Act 9 Vic. c. 30, s. 8 & 9. Act 10, Vic. c. 78. *Infra* c. 2, s. 5 & 6.

SECTION IV.

Of the Obligations of the Lessee.

The lessee is bound, without any agreement to that effect:

D. D. *Bail à Loyer.*

1st. To stock or furnish the premises with saleable property sufficient to warrant the rent; in default of which the lessor may expel him.

2nd. To enjoy the thing leased as a prudent administrator, according to the use intended by the lease.

P. Louage, 190 f.

3rd. To pay the rent when due.

133 f.

4th. To make the repairs incumbent on him to the property.

219 f. 107. 318.

If the lessee fails to furnish the premises leased with furniture or stock sufficient to secure the rent, or commits waste or depredation on them, or does not make a proper use of them; or if he continues, contrary to the will of the lessor, to retain possession of them after the expiry of the lease, or without having paid the rent, he may be condemned in damages, and if the amount does not exceed £10 sterling, (£11 2s 2d cy.) a justice of the peace is competent to award them.

Act 3, W. 4, ch. 1, s. 1. C. P. 161, 162. Ord. 2 Vic (3,) c. 47. P. Louage, 318 226 f. Act 4 & 5 Vic ch. 93 s. 3.

If the lessee makes an undue use of the thing leased, and should any loss accrue to the proprietor thereby, he may obtain a dissolution of the lease, and the lessee is obliged to pay the rent till a new tenant is found. In emphiteotic leases the lessee cannot deteriorate, or change the face of the thing, so as to diminish its value; on the contrary, he should ameliorate it. The emphiteotic lessee may mortgage the property, but the mortgage expires with his lease. When the thing leased is a movable, it should be employed for the purpose for which it is leased, and no other; and if it perishes through the gross or palpable fault of the lessee, he must pay its value at the time it was passed.

P. Louage, 23 f. 189, 322 f. From, t. p.5, 377. D. D. *Emphitéose*, 10th f.

D.D. *Louage des Meubles, &c.*

P. Int. t. 19, c. Or. 26 192 f. D. D. *Bail à Loyer.*

The lessee is liable for such losses and injuries only, as occur through his own fault or that of the persons of his family, servants and sub-tenants. Pothier, Ferrière and Domat say that the lessee is liable for the loss occasioned by fire, unless he can prove that it occurred through some fortuitous event, or was communicated from a neighboring premises. Touiller says that it belongs to the proprietor to prove that the fire accrued through the lessee's fault, which is conformable to the C. C. L. I am not aware how these losses would be judged in Lower Canada, but am inclined to think that the courts would be lenient towards the lessee. It is customary to insert a clause in notarial leases exonerating the lessee from responsibility for accidental fires.

A. 2693.

D. D. *Emphitéose.* Frem, t. 5, p. 347, 360. P. Louage, 221. Ency. Meth. Juris. Bail, p. 678

The lessee of a farm, &c., should sow and cultivate it in a becoming manner, so as to have the land on the whole as rich as it was at the beginning of his lease; leaving as much meadow land, &c. If a garden forms part of the property leased, its keeping in order is obligatory on the lessee.

Act 3 W. 4, c. 1, s. 5.

Whenever a property leased requires repairs, which by law or stipulation are incumbent on the lessor, should the lessee hinder their being made, he may be compelled to compliance by an order from the Judge, and if he still persists in his opposition he is liable to personal arrest and damages.

P. Int. t. 19, c. Or. 24. Louage, 219 f.

The repairs which should be made at the expense of the lessee are all those minor repairs which generally arise through his own fault and that of his family, and not through the age or bad quality of the parts deteriorated, or through fair wear and tear; among which may be mentioned, those which during the lease it becomes necessary to make;—To the hearth, chimney back and casings; to the plastering of the lower parts of interior walls; to the stone and brick pavement of rooms, when but partially broken; but not to those of yards.

225.

C. N. 1754. C.C.L. 2686.

For replacing window glass, when broken accidentally, but not when broken by a hail storm, or other inevitable accident.

To windows, shutters, partitions, shop-windows, locks and hinges, and all such things; and to fences, and ditches, according to the custom of the place.

D. D. *Emphit.*

In emphiteotic leases the lessee is liable for all repairs which concern the utility of the property.

Manuel des Experts, Paris, 1845. Roman Law. Int. t. 19 c. Or. 24. *P. Louage,* 197, 221. Rep. J. *Détérioration.*

If the state of the premises has not been taken account of by writing, the lessee is presumed to have received them in a good state of minor repairs, but the contrary may be proved; it is therefore his interest to establish their state before taking possession. It will also be prudent for the lessee of a farm stock, to establish the state of the latter if they do not appear in good health and condition. The same rule holds good in regard to the hiring of movables.

P. Louage, 82 f. 91 297.

It is the duty of the lessee of a farm to prevent any encroachments or usurpations on it, whether for ownership or servitudes, by notifying the proprietor and hindering them, under pain of damages.

A lessee who has paid his rent in advance to his lessor, may be obliged to pay it a second time, to one who becomes the purchaser in justice of the property, *adjudicataire*, during his lease and enjoyment. In farmage on shares, the fruits should be paid the lessor when gathered.

Rev. Lég. 2e an., p. 33. P. Int. t. 19, c. or. 16.

With regard to the *dimes* payable by Roman Catholics to their curates, and which consist in the twenty-sixth minot of all grains grown, winnowed, thrashed and cleaned from the property leased, the proprietor and the lessee pay them, each one in proportion to what he draws, whether in grain or in money, unless there is a contrary agreement. The grain is deliverable at the presbyterial house. (With regard to the contribution for the building, or repairing of Roman Catholic churches, see *Ency. Meth. Juris. Bail.* p. 685, *and Pothier*

Arrêt Conseil d'Etat, 12th July, 1707. Règlement C. S. Q. 20. Nov. 1668. Ord. do. 27th March, 1713.

The lessee occupying a house, like all other occupants, is responsible for the damage caused by any thing thrown or falling from his windows, &c., whether it is done by day or night, and this even should he be absent, or ignorant of the circumstance. If several persons occupy the same apartment from which the thing has fallen or been thrown, they are severally liable for the damages if the person who caused it is unknown. If the owner or the principal lessee lets out part of the house which he occupies to others, he is responsible for such damage, but has his recourse against the author or those liable as above.

Rép. J. Maison.

The payment of the rent, like other payments, should be made at the debtor's residence, unless where the parties live in the same town, &c., and that it can be sent without cost or much inconvenience to the lessee. This exception is founded on a deference which the debtor owes his creditor; consequently it cannot generally be held to subsist towards a servant, between him and his employer. If the rent is in grain, the lessee is not obliged to convey it, unless he has obliged himself to do so, and even in that case, if it is stipulated payable at the lessor's domicil, he need not carry it further should the lessor remove.

P. Louage, 136, 137. Prêt de Con. 43. Ob. 548 f.

Section V.

Of the Rights of the Lessee.

(See Sections 2 and 6 of this Chapter.)

The lessee, whether of lands or houses, has the power to cede his lease or to sub-let to another person, unless the power has been specially interdicted. He has a right to remove the improvements and additions he may have made to the thing, provided he leaves it in the state in which he received it, and that he can carry them off without hurting it.

Frem, t. 5, p. 335. P. Louage, 43, 131.

He may cut wood from the farm for agricultural implements, provided the trees are not preserved for some other special purpose, such as ornament, or for a sugary, &c. Perhaps he may do so also for burning if there is a wood lot attached to the property, but on this there is nothing established as yet, as far as I am aware. It is probable however, that emphiteotic lessees

Frem, t. 5, p. 364.

D. D. Emphitéose 2-th 23rd.

may cut and use the wood for firing from wood lots, commonly used for that purpose.

D. D. *Bail à Ferme.* *Emphitéose,* 29th Rev. Lég. 2d an. p. 440.

If the fruits of a farm are so totally destroyed by storms, inundations, or other fortuitous event, that nothing can be gathered therefrom, the lessee may claim a remission of rent for that season; but a partial loss gives no right to this claim. Emphiteotic lessees have never any right to it. When the lessee is obliged by his lease to do all the repairs useful, should the house be burnt, he has no claim for indemnification of his repairs.

Domat. *Louage,* s. 3, nos. 3, 6. P. Int. c. Or. 18. *Louage,* 73 f. 306, 115, 81, 325. Rép. J. t. 3, p. 19.

If, during the lease, the thing be partially destroyed by a fortuitous event, or be partially taken for a public use; if it cease to be fit for the purposes for which it was leased, or if the use be much impeded, as if a neighbour raises a wall, so as to intercept the light of a house, the lessee in all such cases may claim a diminution of the rent, or a dissolution of the lease, according to circumstances, but has no right to damages.

Act 9 V. c. 30, s. 9. Act 10 V. c. 78. *Supra,* c. 2, s. 3, & *Infra,* c. 2, s. 6.

The lessee becoming bankrupt is not liable for the future rent or non-performance of the conditions of lease, if the assignee accepts the lease for the benefit of the creditors, or even should he decline it, provided the bankrupt delivers up the lease to the lessor within fourteen days after the assignee declines it. *(Temporary).*

Rév. Lég., 9e an., p. 439, 441. C. P. a. 106. Pigeau I. p. 336, 337.

The tenant is entitled to recover damages if he has not been kept weather tight, (*clos et couvert,*) and he may oppose them in compensation against the rent. Should he quit the premises in consequence of want of repairs, his rent runs only during occupation. But the lessor should in all these cases first be placed in default. (See *Supra* sec. 2.)

P. Louage, 23, 43.

Although the lessee should not alter the destination of the property in general, yet if a shop, &c., is leased by a workman, &c., whose profession is known to the lessor, he is supposed to have leased it for the purposes of his occupation; but a usufructuary should lease a thing only for its common destination.

Ord. 1629. Rép. J. Bail.

The rent of houses and farms cannot be demanded after five years from the expiry of the lease.

SECTION VI.

Of the Dissolution of the Lease, and the causes which give rise thereto.

(See also the preceding Sections of this Chapter.)

P. *Louage,* 765, 369. Rép. J. Congé. Prem, t. 5, p. 60. Rev. Lég., 1re an. p. 381 f. 565.

The lease ceases of course at the expiration of the time agreed on, without its being necessary on either part to notify the other previously when there is a written contract; but when there is no written contract, or if the lease is continued by tacit relocation, a written warning is necessary, on the part of whoever wishes it to cease, according to the nature and value of the property, and the custom of the place. For entire houses or shops, it is customary in Montreal to make this signification three months before hand; but for country dwellings a much shorter period will, I presume, be sufficient; a fortnight or a month is a very common warning for them. (See sec. 7.)

A lease made by a person having only an usufruct, ceases with his right. So also with regard to substituted property, and beneficiary heirships. In these matters the lessor should have made known his right to the lessee or be liable for damages, as he always is when the lease expires through his own fault. In all such resolutions the lessee should be left the enjoyment for the current year, at the rate of the contract. (See sec. 7.)

P. *Louage*, 312 to 316. 297, 300

The neglect of the lessor or lessee to fulfil their obligations, may also give cause for the dissolution of the lease. For non-payment of the rent by an emphiteotic lessee during three years, or by a common lessee during two years, the Judge may order the immediate payment or expulsion, as he pleases. Making a scandalous use of the premises, such as using it as a bawd house, or gambling shop, or turning a dwelling into a smithy, &c., or otherwise abusing them, or abandoning them by the lessee, are also causes of dissolution: so also is sub-letting by him contrary to stipulation; besides which damages are recoverable. These dissolutions or expulsions should always be by judgment.

From, t. 5, p. 377. Pigeau, t. 2, p. 54 f. D. D. *Emphit.* 18th 24th. P. *Louage*, 322. Act 3 W. 4, c. 1, s. 1. Sec. *Supra*, s. 4 & end of s. 5. P. Int. t. 18, c. or. n. 66. Renauldon, p. 647 f. Argou. D. D. *Résolution d'un*, &c.

If repairs incumbent on the lessor by law or stipulation are necessary, and he neglects to make them, after being requested to do so by the lessee, the latter may, on proof of the necessity of the repairs, procure an order from the Judge to the effect that they be forthwith made by the lessor, and if the latter fails to comply, the Judge may on proof thereof rescind the lease, the lessee retaining his action for damages besides.

Rev. Lég., 2e an. p. 62. 1re ann. p. 391, 566. P. *Louage*, 325. Act 3 W. 4, c. 1, s. 2, 3, 7.

If, during the lease, the property be destroyed by an unforeseen event, or if it be taken for public utility, the lease is at an end. The lessee may demand the dissolution of the lease if a neighbour intercepts the light necessary to him, or if the owner does not re-establish the property when in danger of ruin or falling. In this latter case the lessee may be expelled, if the proprietor wishes to rebuild the house leased. (See sec. 5.)

Domat, *Louage*, s. 3, no. 3, s. 6, no. 10. P. *Louage*, 320 or 74 309. Pigeau, t. 2, p. 63, f. 57. From, t. 5, p. 184.

The owner only, who leases his property, (and not the principal lessor,) may dislodge the lessee before the expiry of the lease, when he wishes to occupy it himself, but he must previously take his oath that it is for his own occupation. The husband, whether in community with his wife or not, may exercise this right on her property.*

P. Louage, 328, to 330. D. D. *Privilège du Propriétaire en fait de Bail à Loyer.* Ency. Meth. *Expulser.*

It is not exerciseable in emphiteotic leases, nor in leases of farms, nor when the proprietor has renounced to the right. The lessee should have a reasonable warning of the owner's intention, and it cannot be carried into effect but at the ordinary seasons of leasing. It would seem that, except in cases of urgency, the lessor should indemnify the lessee. The Notary should always explain this right to the lessor and enquire if it is his intention to submit to it, and if not, it should be excluded in the deed.

P. Int. t. 19 c. Or. 65 f. From, t. 5, p. 181, 183. Louet, let. L. no. 4.

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*This right should be entirely abolished, as being unfavourable to commerce, and against the common rights of persons, and the true principles of contracts. It is rejected in the C. N., C. C. L., and old Code of New Orleans, and is condemned by our best authors.

Ency. Meth. *Expulser.*

P. Louage, 62, 101, 288 to 327. Frem, t. 5, p. 240, 242. Ord. 4 Vic. c. 30, s. 28. Act 7 Vic. c. 22, s. 12.

If the lessor sells the thing leased the purchaser may expel the lessee; but with regard to leases passed since 31st December, 1841, if the property has been specially mortgaged *for a certain sum payable to the lessee* in warranty, and the mortgage has been duly registered, before the registration of the sale, the lessee may attack the buyer for damages, if the lessor cannot otherwise indemnify him for his eviction. So also in all notarial leases made before 31st December 1841, and duly registered, even without any special mortgage on the property. The purchaser, according to Pothier, should allow the lessee to enjoy the thing for the current year at the price of the contract, but it may be doubted if this is obligatory.

Rev. Lég., 1re an., p. 348, 566.

An action for the resolution of an emphiteotic lease cannot be maintained, unless the lessee has been placed in default, (*en demeure,*) so indeed it may be said of all actions in resolution of leases for non-fulfilment of stipulations or obligations, when there is a possibility of yet fulfilling them.

P. *Louage,* 277, f. 317.

A lease is not dissolved by the death of either the lessor or lessee, but continues to subsist between them or their heirs.

Burton, Law of Scotland, p. 511. See sec. 3 & 5 *supra.* Pegean, T. 1, p. 73. Bornier, on t. 11, a. 4, Ord. 1673.

A clause of bankruptcy may be inserted in a lease, to provide, either that the lease shall become null in case of the lessee's bankruptcy or insolvency, or that the landlord shall have the option of resuming it. The lessor may stipulate that the lessee shall insure his movables to a certain amount, and transfer the insurance to him in case of fire, to warrant his rent. A lease made in fraud of creditors, may, like all such acts, be revoked, and another made in its place by the Court.

Acts 9 Vic. c. 30, s. 8 & 9, and 10 V. c. 78, *supra* l. 2, sec. 3 & 5.

Leases of immovables, made for more than one year, are cancelled by bankruptcy, unless the assignee shall choose it to be continued for the benefit of the creditors. *(Temporary).*

Section VII.

Of Tacit Relocation.

P. *Louage,* 46, 342 f. 363. D. D. *Bail Loyer.* Rép. J. *Congé.* P. int. t. 19, c. Or. 75 f.

When the lessee continues to occupy the premises leased after his lease has expired, beyond eight days, (Guyot says, when the rent is under three hundred livres), or if it is a whole house or workshop, (Guyot says, when over three hundred livres,) and if the lessor does not afterwards expel him, (and he cannot do it before), he is supposed to succeed to a new lease of the property on the same terms as the preceding one. If, however, any plausible cause existed which may have prevented the lessor from showing a contrary disposition, the lease is not tacitly renewed. In the Custom of Orleans, the tacit relocation of a house was presumed after eight days, and with regard to farms it was left to the prudence of the Judge. But can the tacit relocation be presumed, because one party has not notified the other of his desire to discontinue the lease, before its expiry? Our custom fixes no time for the previous notification, and the *Ency. Meth. Juris.*, says that in consequence it is sufficient to hinder the relocation that the notice be given

on the last day of the term. The custom or usage of the place will however have the greatest weight in the decision of such matters; but it should be remembered that although it is usual to give a much longer warning, it has not been customary to adjudge a continuance of the lease for want of this longer warning, or in other words that a precautionary custom, or one which is followed through good will when convenient, should not be considered as alone sufficient to confer an absolute right to continue the lease in favor of either party, when not followed by the other.

Rep. Jurid. v. Reconduction.

The question, whether, after the last day of the term but before the time necessary for presuming a tacit relocation, as above, either party may claim a discontinuance of the lease, without previous warning, is perhaps undecided.

The term of the tacit relocation is similar to that for which property of a like nature is generally leased in the same locality. The terms for country dwelling houses in the French Canadian settlements, are the 1st May and 29th of September. Shops in a town are generally leased for a year, from the 1st of May. For farms, it should be for from one to three years, according to the time generally necessary to gather an average revenue, according to the nature and destination of the property, and the rotation of the crops. The custom of the place is one of the surest guides in such cases, and the term of the previous lease may greatly influence the decision, according to circumstances.

P. Louage, 350 f. 37. Ency. Meth. Reconduction 14th. D. D. Tacite Reconduction. Supra, c. 2, s. 1.

Although the lessee should succeed thus on the same terms as the preceding lease, the same hypothec or mortgage cannot exist in favor of either party in warranty; nor are the sureties for the former lease responsible for the new one.

P. Louage, 367.

The tacit relocation obtains, with regard either to movables or immovables, but with regard to movables, the new lease may be discontinued whenever either party pleases, and with regard to leases made for nine years or upwards the tacit relocation cannot obtain. The lessor must consent thereto.

370 f. D. D. Emphitéose 30th Rép. J. Tacite Reconduction.

CHAPTER III.

Of the Letting Out of Labor or Industry.

Labor may be let out in three ways:

1st. Laborers, servants, apprentices, journeymen, seamen, clerks and secretaries, &c., may hire their services to another person. (1)

P. Louage, 16.

2nd. Carriers, porters, forwarders and affreighters, may let out their services for the conveyance of persons or of effects;

(1) I do not treat here of the Rights and Obligations which may exist between two persons the Clerk or Agent of one of whom may have contracted for him with the other: this subject belongs more particularly to the Title of Mandate, or Principal and Agent.

3rd. Workmen may hire out their labor, industry or talents, to make buildings or other works, or by undertaking jobs of work.

Section I.

Of Servants, Laborers, Apprentices, Journeymen, Clerks and Seamen, and their respective Employers.

The contract between those persons and their employers are regulated in the absence of particular law or express stipulation, by the rules governing Conventional Obligations generally.

Act 57, G. 3 c. 16, s. 6. Acts 3 & 4 V. c. 35 & 36, 4 V. c. 31 & 32 6 V. c. 50, s. 18, 50 al.

In the Quarter Sessions of Quebec, Montreal, and Three Rivers, the Justices were authorised to make rules, respecting the government of these persons, and for the conduct of their employers towards them, in their several districts, saving with regard to seamen; and subsequently those powers were vested in the City Councils of Quebec and Montreal, within their respective jurisdictions.

Justices empowered to make rules for the government of apprentices, and of their masters and mistresses. *But see Tables to Rev. Stat.*

The Act 57 G. 3, c. 16, s. 6, contains that "from and after the passing of this Act, it shall and may be lawful for the Justices of the Peace, and they are hereby authorised, in the Terms of the General Quarter Sessions of the Peace held in the Districts of Quebec, Montreal and Three-Rivers, respectively, to make Rules and Regulations to restrain, rule and govern the apprentices, domestics, hired servants and journeymen within their respective districts, and also to make rules and regulations for the conduct of masters and mistresses towards their said apprentices, domestics, hired servants and journeymen; which said rules and regulation shall not have force and effect until they shall have been approved by the Judges of the Court of King's Bench, or any two of them, for the Districts of Quebec, Montreal and Three-Rivers, respectively: Provided always, that nothing herein contained shall be understood to give power or authority to the said justices of the peace, in virtue of the rules and regulations which they are hereby authorised to make as aforesaid, to inflict upon the said masters or mistresses, a penalty exceeding ten pounds, current money of this Province, and upon the said apprentices, domestics, hired servants and journeymen, for any breach or contravention by them committed against the said rules and regulations, a greater fine than ten pounds, current money of this Province, or two months imprisonment in the house of correction in the respective Districts aforesaid: And provided also, that the said rules and regulations shall be subject to the same formalities, rules and provisions as are prescribed respecting the rules of police."

Penalties, amount limited.

Rules subject to certain formalities.

Mode of proceeding to compel parties to appear.

A different mode in certain cases.

"The mode of proceeding in all cases of complaint respecting the said apprentices, domestics, hired servants and journeymen, and their masters and mistresses, shall be by summons, to cause the party complained of to come before the said justices of the peace, to answer the complaint, except where the party complaining shall make oath before a justice of the peace, that

he or she has reason to believe that the person complained of, being his or her apprentice, domestic, hired servant or journeyman duly bound or hired, is about to leave the town, to desert or secrete himself, or has in fact left the house or the town, or has already deserted or secreted himself; in which case it shall be lawful for the justice of the peace before whom such oath has been made, to grant his warrant for the apprehending and holding to bail such apprentice, domestic, hired servant or journeyman, until the parties can be heard and the matter complained of determined; which hearing and determination, in cases of arrest, shall not be delayed longer than forty-eight hours from the time the person so arrested shall be brought before the justice of the peace, unless a longer time shall be granted, at the request of either party, for the production of proof, or other sufficient cause to be allowed by the justice of the peace before whom the complaint shall be brought: And in case the said apprentice, domestic, hired servant or journeyman, so apprehended, shall not offer bail for his or her appearance to answer to the said complaint, it shall be lawful for any one justice to commit him or her to the Common Goal for safe custody, until he or she find bail, or until the cause be heard and determined; any law, usage or custom to the contrary in any wise notwithstanding." s. 7.

But see Tables to Rev. Stat.

"No person or persons whatsoever shall be liable to any prosecution for the breach of any rule or order for the regulation of the police, or rule, order or regulation concerning apprentices, domestics, hired servants or journeymen, or their masters or mistresses, within the cities of Quebec or Montreal, or the town of Three-Rivers, respectively, unless such prosecution shall be actually commenced within one calendar month next after the commission of the offence, or to any prosecution for the breach of any other rule or order which may be made under or by virtue of this Act, unless such prosecution shall be actually commenced within two calendar months next after the commission of the offence." s. 15.

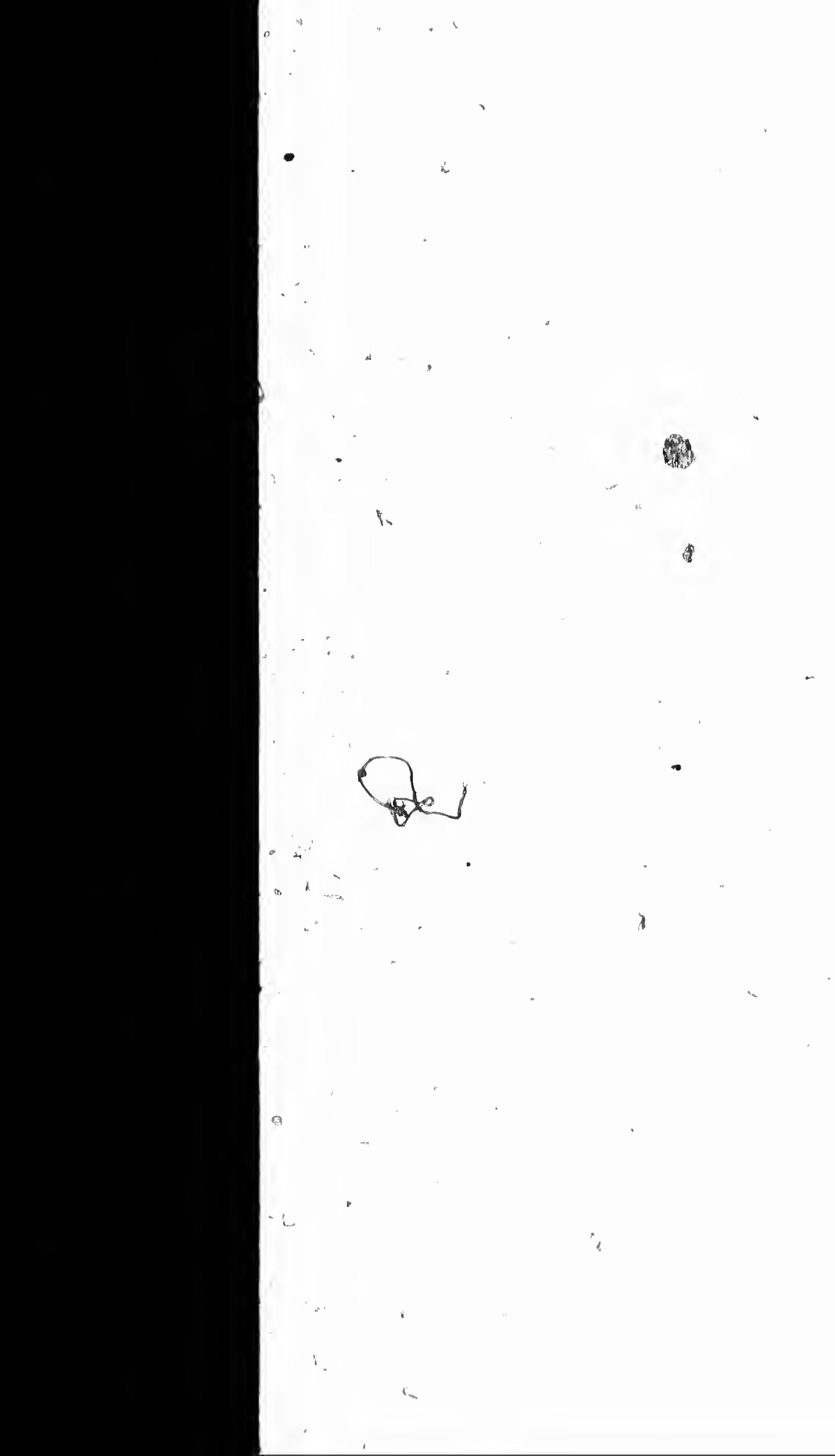
Limitation of actions.

But see Tables to Rev. Stat.

By the Act 8 Vict., c. 59. The City Council of Montreal is authorised to make bye-laws, "For restraining, ruling, and governing apprentices, domestics, hired servants and journeymen, in the City of Montreal, and for the conduct of masters and mistresses, towards their said apprentices, domestics, hired servants and journeymen, in the city of Montreal." The said Council, made and published in 1847, certain regulations on those subjects.

The Act cited in the margin contains that "if any apprentice or servant of either sex, or journeyman, who may be bound by act of indenture or other written contract, for a longer time than one month, or by verbal agreement for one month, or for any shorter or longer period, shall be guilty of ill-behaviour, refractory conduct, idleness, absence without leave, or dissipating his or her master's, mistress's, or employer's effects, or of any unlawful act that may affect the interest, or disturb the domestic arrangements of such master, mistress or such employer,—such apprentice, servant or journey-

Act 6 W. 4, c. 27, made perpetual by Ord. 3 Vic. c. 6, s. 1. Rev. Stat. p. 584.



man, may, upon complaint and due proof thereof, made by such master, mistress, or employer, before two justices of the peace at a special sitting, be by such justices sentenced to pay a sum not exceeding two pounds ten shillings, currency, and in default of payment, to be imprisoned in the Common Gaol of the district or in the house of correction, for a term not exceeding fifteen days: Secondly: That if any such apprentice, servant or journeyman, bound or engaged as aforesaid, has any just cause of complaint against his or her master, mistress or employer, for any mis-usage, defect of sufficient and wholesome provisions, or for cruelty or other ill-treatment, or other matter of the same kind, such master, mistress or employer may be prosecuted before two justices of the peace, and if the complaint shall appear to be well-founded, such justices of the peace may condemn such master, mistress or employer to pay a penalty not exceeding two pounds ten shillings, currency: Thirdly: That on complaint made by any master, mistress or employer against his or her apprentice, servant or journeyman, or by any apprentice, servant or journeyman, against his or her master or employer, of continued mis-usage and repeated violations of the ordinary and established duties of the parties towards each other, any justice of the peace at a special sitting, may on due proof of the fact, annul the agreement or contract, (whether verbal or written,) by which such master, mistress or employer, and such apprentice, servant or journeyman may be bound to each other; Fourthly: That any apprentice, servant or journeyman, who shall absent himself or herself, without leave, or shall altogether desert the service of such master, mistress or employer, shall, upon due proof of the fact, be condemned to make such time good to his master, mistress or employer; or in case of default on the part of such apprentice, servant or journeyman so to do, he or she may be apprehended on the warrant of the justice of the peace, and committed to the common gaol of the district, or to the house of correction, for a time not exceeding fifteen days: Fifthly: That if any such apprentice, servant or journeyman shall absent himself or herself, by day or by night, without leave, or shall altogether desert the service of his or her master, mistress, or employer, such apprentice, servant or journeyman, shall be proceeded against by warrant under the hand and seal of any one justice of the peace: Sixthly: That if any person shall knowingly harbor or conceal any such apprentice, servant or journeyman, engaged as aforesaid, who may have deserted from the service of his or her master, mistress or employer, such person shall incur and pay a penalty not exceeding two pounds ten shillings, currency, to be recovered as aforesaid, before any two justices of the peace in special session: Seventhly: That no such master and mistress shall take and carry out of the district in which they reside, any such apprentice and servant, without the consent of such apprentice or servant, (or his or her parents or guardians, if a minor,) except such as may be bound to the sea service: Eighthly: That if any person shall knowingly entice, by any means whatever, any such apprentice, servant or

Penalty

journeyman, so engaged as aforesaid, to depart from the service of his or her master, or mistress, or employer, and that in consequence such apprentice, servant, or journeyman shall depart from such service, any person or persons so offending shall be liable to a penalty not exceeding two pounds, ten shillings, currency, to be recovered as aforesaid, or in default of payment, shall be imprisoned in the Common Gaol of the District, or in the house of correction, for a time not exceeding one month: Ninthly: That in all verbal agreements between masters, mistresses, or employers, and the servants and journeymen, for any longer period than a month, the party who shall not intend to continue the engagement beyond the term so agreed upon, shall be bound to give the other party fifteen days' notice at least to that effect, otherwise the agreement shall be held to have been continued for one month, from the date of such notice; the whole under a penalty of two pounds ten shillings, currency, and in default of payment, of imprisonment in the Common Gaol of the District, or in the house of correction, during a period not exceeding fifteen days."

Penalty.

"In case of non-payment of the penalties aforesaid, with costs, within fifteen days after conviction, it shall be the duty of either of the justices of the peace, before whom such conviction shall have taken place, to issue his warrant, addressed to any constable or bailiff whomsoever, to cause the amount of such penalty and costs to be levied according to law, in the ordinary manner, and (in case of non-payment) by the seizure and sale of the goods and chattels of the defendant; or it shall be lawful for such justice of the peace to commit such person to gaol or to the house of correction, for a period not exceeding fifteen days; and such imprisonment shall be in the place and stead of the penalty."

All penalties are to be paid into the hands of the Receiver General of the Province. § 3.

Prosecutions under this Act should be commenced within three calendar months after the offence. § 4.

It is "the duty of the senior captain of militia, in each parish, seigniory or township, to cause this Act to be read and published every year, at the door of the church of the parish, on the first Sunday in the month of May, immediately after Divine Service, in the forenoon.*

The employer cannot retain the wages due, should his servant quit his employment before the time agreed on, but has an action of damages against such servant, &c., which are usually fixed at the extra amount, which the employer had to pay to a person to replace the defaulter, or otherwise as circumstances may warrant. Livonière says that in those cases the wages are forfeited, but this is against the well acknowledged principle

Toullier, Bourjon, Rép. J. Supra, c. 1.

P. 59.

* Remark, that the Acts cited, incorporating the cities of Quebec and Montreal, vest in their Councils the power of making regulations on those subjects, and that the 6th. W. 4th. c. 27, excepts the parishes of Montreal, Quebec and Three Rivers from the above regulations; *Query*, as to the making and enforcing of such regulations in the *country parts* of the said three parishes?

Table 1, to Rev. Stat. p. 41 and 153, which see on several points connected with these remarks.

Denisart, *Batiment.* C. P. 105, 106. Pigeau, t. 1, p. 336, 337 P. oblig. 709, 723. C. Or. a 264, 265. Danty, p. 52. P. ob. 718 to 722.

that "all obligations to do or not to do resolve into damages." Should the master be sued by the servant for the wages, the employer may oppose his damages in compensation, (set off.)

The claims of day laborers, and journeymen for wages, unless hired for a term or by the job, are prescribed against after forty days from the last day's work. This prescription is founded on a presumption of payment alone; therefore the claimant can demand the decisory oath of the employer, who is held to swear whether he owes the debt or not, in default of his doing which the oath is referred to the claimant, on which judgment is given. If it is the wife, or heirs of the employer, or tutor of the heirs, they must make oath as to their knowledge of the claim, otherwise it is referred to the claimant. If the widow in community with her late husband, refers the oath, or acknowledges the claim to be due, the heirs may still contest the half, for which they are liable, and if any one of the heirs refers the oath, or acknowledges, it is only for his own share in the debt. When the demand does not exceed £4 3s 4d, or £6 5s, in the Commissioners Courts, the claimant may prove by witnesses that the debtor offered to pay the debt since the demand, or even before the demand, if it is after the time when he alleges having paid it.

Supra, c. 1.

Rev. Lég. 2e ann. p. 27.

C. P. 127. P. Hyp. c. 2. s. 3, 24th. *D. D. Gages des Domestiques. Salaire des Domestiques.* P. ob. 706 f. P. ob. 712 f. c. Or. 265. D. D. *Prescrip. de 6 mois.*

Domestic servants cannot institute a demand for their wages, after a year from their quitting the employment, unless there is a note, obligation, settlement of account by writing, or judicial summons; in either of which cases they may demand three years wages, if the debtor is alive; or even if he is dead, provided that he kept an account book of his receipts and disbursements; but if not, only one years arrears can be demanded. If the summons has fallen through, the prescription may obtain. These dispositions are not followed in regard to merchants, and artisans having current accounts in their books.

D. D. *l. c.*

Wages of servants, in towns, such as lackies, *valets*, or *femmes de chambre*, porters, cooks, and others of a like nature, have a privilege for the payment of their wages, for the period for which prescription cannot be opposed against them. Ferrière says for one year. This privilege goes after that for rent. It did not extend in France to bank, merchants, or corporation clerks. The Registry Ordinance exempts servants wages for a period of two years from registration, designating them as privileged debts. Whether the Courts may be disposed to allow them as privileged for two years arrears generally, notwithstanding the Art 127, of the Custom of Paris, and whether they might allow them such privilege, after the year from their quitting employment, in cases where prescription might arise against them as above mentioned, may be a matter of dispute. I believe that it is customary for creditors to allow a privilege for the salaries of clerks, on the estate of their insolvent debtors, but for how long is uncertain. In England they are privileged for six months arrears. In Scotland, the civil laws of which are more analogous to our own, they are not privileged at all.

Duranton, L. 3, t. 18, no. 57. Pand. F. on c. N. 2101. 4o. V. c. 30, s. 2.

Smith's Merc. Law, p. 596. Burton's Manual, p. 607.

Clerks or servants of *traders, &c.*, becoming bankrupt, under our bankrupt laws, are privileged for twelve months arrears of wages; and laborers or workmen are allowed a privilege for one months arrears. (Query. Are they allowed to come in with the other creditors, for the unprescribed balance?) *Act* 7 *V.*, c. 10. s. 46, 47; 9 *V.*, c. 30, s. 1; and 10 *V.*, c. 78.—*(Temporary.)*

Gleaners, reapers, those who help to gather in fruits or the harvest, &c., are privileged on the fruits gathered, for their wages. Ploughmen are privileged on the fruits of the ground ploughed by them, for the season. These go before the rent.

P. Proc. cir. p. 4, c. 2, s. 2, a. 7. § 2. 25th. Communauté, 325. Pigeau, 1. p. 682.

(For further information, on privileges of workmen, &c., see references).

With regard to the tacit relocation of servants, those whose terms of engagement it is customary to begin and end on certain days of the year,—such as farm servants,—are supposed to be tacitly re-engaged till the next term, when they continue their services some time after the beginning of a new term without explanation: those whom it is customary to hire at no particular term, are tacitly re-employed for the time they serve anew only, and they or their employers, may quit the engagement at pleasure.

Rep. J. *Tacite Reconduction.* P. Louage, 176, 372

Minors are allowed to sue without the intervention of a tutor for wages, in the Small Cause Courts.

(The Statute Law cited in this section should always be borne in mind in the matters within its influence).

The Act 6 W. IV, c. 28, provides for the recovery of wages due to seamen. The Imperial Act 7 and 8 Vic., c. 112, amends and consolidates the laws relative to Merchant Seamen. The Act 10 and 11 V, c. 25, regulates the shipping of seamen, in any description of sea going, trading, or passage vessel, lying and being within the port of Quebec, and in the river St. Lawrence, between the Ports of Quebec and Montreal, from the 1st January, 1848; it prohibits others than a Shipping Master, or his deputy, the owner, part owner, or person in charge of such vessel, or the Ship's Husband, from hiring seamen to be entered on board thereof, &c., (For further particulars see those Acts).

SECTION II.

Of Carriers, Porters, Forwarders and Affreighters, &c.

Carriers, Porters, Forwarders and Affreighters, are subject with respect to the safe keeping and preservation of the things entrusted to them in the exercise of their callings, to the same obligations and rules which are imposed on tavern-keepers. They are responsible, not only for what they have actually received in the vessel or vehicle, but also for what has been delivered to them at the port or place of deposit to be placed in the vessel or carriage, provided it can be proved that it was delivered into the charge of, and received by some person having authority by delegation or otherwise, to that effect, or that a bill of lading has been granted for the things, or that they have been entered in their

D D. *Voituriers, par &c. Messagers.* Domat, L. 2, t. 16. Rev. Lég. 2e an. p. 74. Rep. J. *Bateau.* P. ob. 121 f. 453 f.

freight book; yet if the loss is occasioned by any fortuitous and uncontrollable event, or if it has been stolen by a force which they could not prevent, they are not liable for it. The mere bringing of things to the conveyance, even in the sight of the master, is perhaps not sufficient to constitute a deposit, of a nature to make the forwarders responsible for them. Nevertheless, it is not impossible, but that carriers, forwarders, &c, may be responsible for things, lost through their fault or negligence, although they may not have entered them on their books or signed a bill of lading for them, and that they may be condemned to make good their value, according to the detailed declaration of the owner, and on his oath. This jurisprudence was followed in France before the establishment of the superior Council of Quebec, and is confirmed by a judgment of the Parliament of Paris, of 1656, since which time no local legislation has settled the question. In 1681, an Ordinance of the *Châtelet* of Paris, contained, that those employing carriers, &c., could not claim indemnification for the loss of trunks, boxes, and other things under lock and key, unless they caused an entry of their effects to be made in the books of the carriers, when beyond the value of one hundred and fifty livres; and this regulation is acknowledged to have been very wise; but the *châtelet* was not considered to have had the power of making such a law; even for its own jurisdiction, and it certainly never could be cited as indubitable law in Lower Canada. Since 1681, several French Ordinances and Judgments were given, of higher legislative authority, adopting very nearly the said regulation, but none of these can be cited as absolute law in Lower Canada. It is very desirable that the question should be equitably and clearly settled by legislative enactment, and that persons engaged in the transport of things, should be protected in their useful calling. The commercial laws of France, existing two centuries back, are not adequate to the trade of the present day, when the necessities for traffic and transport are so greatly increased. Masters or agents of steamboats, railroads, canal and other conveyances requiring dispatch, cannot reasonably be made responsible for every thing taken to or from their boats or vehicles, often in the greatest hurry and confusion and in every variety of condition; the utmost vigilance would be insufficient to take account of them; and even were it possible, what a door for fraud would such a law open to the rogue!

P. Dépôt, 75 f. 4, 7.

D. D. Aubergiste. Garantie des hardes. &c.

With regard however, to money or other precious things concealed in packets, the forwarders are not responsible for such, unless it has been declared to them. *Arrêt,* 1 *Janv.* 1628, *J. Aud., Danty. ad. sur 3me. C., D. D. loc. cit.*

Pand. F. on D. N. 1953.

If an innkeeper refuses to take charge of the articles brought to him and has warned the traveller to be on his guard before putting up at his house, he is not responsible for their safe keeping if the traveller could have found other lodgings convenient. The traveller or depositor is generally allowed to prove the value of the things stolen, to a small amount. He must reimburse the forwarder for his advances for the safe keeping

P. Dépôt 69 f.

Rep. J. Messenger.

of the thing, and his indemnification for all it has cost him, by loss or otherwise.

The claims of forwarders, &c., for carriage, and its accessories are privileged on the things transported, even before the lessor of houses, as long as they retain possession, but after the lessor if they do not. (See, in connection with this subject, the Act, 10 and 11 V., c. 10.)

P. Proc. Civ. P. 4, c. 2. s. 2. a. 7, § 2, 33d. Rev. Leg. 2nd. an. p. 77.

Like all other workmen or undertakers, those persons are responsible for the damage occasioned by them through their work being done improperly, or through ignorance of their calling, in whatever they should reasonably know.

Rep. J. Dommage.

All wharfingers, warehouse-keepers, agents, steamboat proprietors or companies, &c., or other persons, in whose custody any unclaimed goods or articles may remain, should, under a penalty of one fourth of their appraised value, advertise once a month, in at least one newspaper, printed in Quebec, and one in Montreal, a list and description of such articles, with the marks, numbers and addresses, if such there be, on them; notifying all claimants to come forward within six months, to prove their property, and receive it, on paying reasonable charges, and in default thereof, that they shall be sold. If no owner proves within six months, the packages, &c., may be opened and examined, and if no knowledge of the owner can be had, they may in six months more, be sold by public auction, and the net proceeds lodged with the Receiver General. Fruit, and other perishable articles should be immediately advertised, and may be sold in a week from the advertisement. If the probable owners are ascertained, they should be advised through the post, with a similar intimation. (See the Act cited, for further particulars.)

Act 2, W. 4, c. 32, s. & 4.

s. 2.

SECTION III.

*Of the Contract of Affreightment.**

Contracts of this description are either:

Of Affreightment by Charter party; or

For the conveyance of goods in a general ship, or on general freight.

P. *Charte-Partie*, 1, f.

Smith's Merc. Law, bk. 3, c. 3.

The contract by charter-party is that by which an entire ship or some principal part of it is lent or hired to a merchant for the conveyance of goods on a determined voyage to one or more places. In substance, it is similar to other contracts of letting and hiring, and the freight to be paid is governed by the same rules as the price of a lease.

Ib. s. 1, p. 228.

Cyc. Com. Affreightment.

P. *Charte-Partie* 18, 6, 7, 13, 48 f.

It may be entered into verbally, but the proof of the contract

* "The *Code Maritime* of France, if it ever was in force in Canada" (Note. It was not registered in the Superior Council of Quebec, although passed subsequently to April, 1663.) "was not a part of the common law, but of the *droit public*, and consequently was superseded by the effect of the conquest; and if it was law in the Admiralty jurisdiction of that time, whether it was a part of the Common Law or of the *droit public*, it was abolished by the introduction of the Marine law of England."

Rev. Leg. 1st. an. p. 508, 2d. an. p. 74.

or of the value of the freight, is subject to the same rules as these laid down—*supra*, chapter 1. excepting when it may be regarded as a commercial transaction, in which case testimonial proof is admissible to any value of claim. The contract may be entered into by the owner, his authorised agent or by the master; nevertheless the owners may exonerate themselves, by abandoning their share in the vessel and the price of the freight. The vessel with its rigging and apparatus, are affected for the shippers' claims or damages, but this privilege ranks after that for the seamen's wages, the claims for the equipment, and money lent for the equipment.

The owner or his agents should not hinder the loading of the freight, but on the contrary, should obviate all impediments as far as possible. When once on board, the freight is under his especial charge. He is responsible that the vessel is sea worthy, provided with all necessaries, and in every way fit for the voyage undertaken; that the crew is sufficient in number and ability, and where such is the usage, he must have a pilot on board. The vessel should sail at the appointed time, wind and weather permitting: it must be properly navigated and directed to her port of destination by a usual approved course: should she deviate therefrom unnecessarily, the owners and master are responsible for consequent loss, even should it be by the act of God, or the Queen's enemies. The master must not incur risk by having contraband goods on board, or without having the proper papers. He must use every effort to convey the cargo in safety, and when he cannot proceed in his own vessel, should forthwith adopt such means as may be best suited to preserve the safety and value of all the property committed to his charge. Transhipment for the place of destination is the first object if practicable; if not, return or a judicious deposit may be expedient. The merchant should be consulted, if possible. A sale is the last thing the master should think of, for if he sell without necessity, the owners, as well as himself, will be answerable to the merchants; and they will be equally answerable if he place the goods at the disposal of a vice admiralty Court in a British colony, and they are sold by an order from such Court, because such courts have no authority to sell them; and the persons purchasing will not acquire a right to them against the merchant, but are answerable to him for the value of the goods purchased by them. If goods are put on shore by the master and lost, he is not answerable for the loss unless it occurred through neglect, or want of ordinary care, according to the circumstances. If the master carelessly quits his ship and it is lost during his absence, he or his employers are answerable for the cargo.

In a charter-party "the accidents of the sea, and of the season," were excepted from a general responsibility for the chartered vessel, and the charterer was held not to be responsible for its loss in the ice.

No freight is due for what is not safely landed, unless it has been sacrificed for the common good of all those interested in

27 f.

Rev. Leg. 2nd. an. p. 354.

P. *Charte-Partie*, 35.

Rev. Leg. 2d. an. p. 75 see also p. 77 last clause & p. 74.

p. 78.

P. *Charte-Partie* 63, 65, 70.

the freight, ship and cargo; in which cases, as well as where expenses have been incurred for the common good, freight is due; yet the shipper or master should be indemnified by the other shippers, and persons interested; the whole of the parties interested contributing to the loss. The master should retain the goods until this contribution is paid, and the loser has no action against the other shippers for such contribution, which is estimated for the goods lost at their cost price, and for those, preserved at their present value. Goods on freight are delivered when landed on a wharf, but they cannot be removed till the freight is paid for; and for which the affreighter has a privileged lien on them. The consignee who received goods shipped to be delivered on payment of freight, may be sued for the amount of freight and can support an incidental cross demand for damages occasioned to the goods by the master's negligence. The vessel is in its turn, liable for the goods. (For the privileges on vessels, and whether they subsist after a voyage, see further *Rep. J. Vaisseau.*)

Smith's Merc. Law, p. 292, 286. Cyc. Com. Average. D. D. *Loi Rhodia*, &c.

Fret.

Rev. Leg. 2d an. p. 77, 1st. an. p. 346. C. P. a. 106.

P. *Proc. Civ.* P. 4, c. 2, s. 2, a. 7, § 2, 35.

Lacombe, *Batteau.*

If the vessel is hired by the month, the time begins from the time of her sailing or of making ground, and continues all the time she is at sea, and during that to which unavoidable delay may have subjected her. When the rate of freight has not been agreed on it is supposed to be at the current rate, but if the goods have been loaded without the knowledge of the captain or clerk, the highest rate may be charged. The signature of the captain or of the clerk binds the owners. The bill of lading should mention the exterior and general quantity and quality, and the mark on the goods; as, *so many bales of cotton, &c.*

Rep. J. *Affrêtement.*

P. *Charte-Partie*, 9, f.

For an epitome of the English Laws, relating to Marine Insurance, reference is made to that valuable mercantile work, the *Cyclopædia of Commerce.*

Section IV.

Of Undertaking Jobs, or Contracts of Work.

A contract of this kind may be undertaken, either for furnishing the manual part alone, or to furnish the materials also of the work. When the undertaker furnishes the materials, if the work be in any matter destroyed previous to its being delivered over to the owner, it is the undertaker's loss unless the owner has previously been in default for not receiving it. When the undertaker furnishes only his work, industry or talent, he is liable for the loss or deterioration, when occasioned by his own fault only: and in these cases, if the detriment arrives by pure accident before it is delivered, or before the owner is placed in default, it is presumed to have been through a defect in the work, unless it has been caused by a fortuitous event or by the bad quality of the materials, and consequently the undertaker has no claim for his wages.

P. *Louage*, 393, 394.

433, 433 f. 590.

436 f.

If the work be composed of detached portions, or is taken at the rate of so much a measure, it may be delivered separately; and such a delivery is presumed, if the owner has paid the undertaker the price of the work already completed.

440 f.

The person giving out the work, may desist from his bargain by notifying and indemnifying the contractor; but the contractor may always be compelled to execute the work: nevertheless, when the contractor suffers loss by it, up to one half of its value, he may sometimes obtain an indemnification.

Ins. Con. L. 2, t. 29.

P. *Louage*, 437.

When a fortuitous event, entirely or nearly so, prevents the progress of the work, the bargain is resolved, yet the undertaker should be indemnified for his damage.

425 f. Ob. 163, 166

If a building which an undertaker or architect has taken by the job should fall to ruin either in whole or in part on account of the badness of the workmanship, he bears the loss with all damages, provided the bargain has been passed before a notary; the time holding good for ten years, for the stone walls or other heavy works, and for three years for lighter works. Some authors says that roofers or coverers, masons and carpenters are held in this respect for edifices built or reconstructed by them to a ten years warranty, counting from the finishing of the work; the warranty making them liable to replace the work at their own cost; and make joiners, plumbers, pavers, plasterers, &c., to be held to a six years warranty. Other authors make masons and carpenters responsible during ten years, and others who work at houses, such as lock-smiths, &c., during one year only. According to some authors, the builder is liable during thirty years for all gross faults, such as that of putting wood too near a chimney, from the time of its being received; and the workmen aiding in the construction are responsible, each one for his part in the work, during the year. The undertaker is responsible for the acts of the persons he employs, when done by them, in the work for which he is employed. Masons and carpenters as well as all other individuals, are responsible for the bodily damage or hurt which they occasion to a person in the execution of their work, unless they have taken due precautions to obviate any such damage, by acquainting those to whom their work may be dangerous, and otherwise.

D. D. *Garantie dont sont tenu les Maçons*, &c.

Parf. Not. L. 5 c. 7, 52d.

Rep. J. t. 2, p. 231, 1st col. *Batiment. Maconnerie.*

Lois des Bat. p. 405.

Denisart, *Batiment*, 14 15.

Ency. Meth. *Quasi Delit.* P. Ob. 456 f. 423 f. 121 f.

Louage, 428. Rep. J. *Dommage.*

Ency. Meth. *Nuisance, Boues.*

All workmen are responsible for the damage occasioned by work done by them improperly, or through ignorance of what they should know in their respective trades.

C. P. a. 203. Rep. J. *Mur.*

When it is intended to demolish a house built against a common wall, or to pierce the wall as a rest for beams, &c., or to build a new house against a common wall, the mason before commencing the work, should notify the neighbours interested in the wall at their domicils, of such intention to demolish, build, or pierce, under liability to damages, for which the owner is also liable.

P *Louage*, 407 f.

When a work has been taken, according to a settled plan, the undertaker cannot demand an increase in the price because the original plan is altered or augmented, unless he can prove that the same has been authorised by the owner, and that the altera-

tion has been necessary or unforeseen, or when it may be fairly supposed from the extent of the alteration, that the owner must have given his consent to it.

440, 444.

The owner has a right to cancel the bargain at pleasure, even where the work may have been already commenced, by paying the expences and labor already incurred and such damages as the nature of the case may require. If the owner, who furnishes the materials neglects to do so in good time, the undertaker has redress against him, either for damages or by demanding a rescission of the contract; and the owner has similar redress against the undertaker who fails in regard to time or does the work improperly, in which last case the price may be modified accordingly. If a workman employs materials furnished him in an improper manner, or allows them to be destroyed, he should supply new materials at his own expense.

410 to 427 f. Rep. J. *Louage.*

Denisart. *Bâtiment.*

Generally, no part of the price of a contract of work, can be demanded, until the work is done, unless there is a contrary agreement.

Rep. J. *l. c.*

When a work is done, the owner should accept of it, either formally or by giving it his approbation; but if he finds it deficient, and will not receive it, the judge may order its visit by *experts.* He is presumed to have accepted of it if he allows a certain time to pass without legally signifying his disapprobation of it to the contractors, and particularly so, when he has paid the price.

P. *Louage*, 421 f. 453 f.

Contracts for hiring out work are cancelled by the death of the workman, architect, or undertaker, whenever the work is of such a nature that the personal talents of the undertaker have been taken into account, unless the owner should consent to the continuance of the work by the representatives, or heirs of the deceased person. If the contract is abandoned, the owner may keep the materials already prepared, according to their value, in case they should be useful to him. (For the conflicting interests different heirs concerned in a contract of work, See *Pothier. Louage,* 453f.)

427. Domat, *Louage*, s. 7.

Masons, carpenters, blacksmiths, and all other artificers who undertake work by the job, are under the provisions above mentioned. Pand F. t. 15, p. 203.—*Lois des Bâtiments.*

Pand F. t. 15, p. 201. Rep. J. *Ouvriers.*

The workmen employed by the undertaker, have no direct action against the owner for their wages; they can merely attach in his hands what he may be owing the undertaker.

Section V.

Of the Privileges of Workmen, and Contractors.

P. Proc. Civ. p. 4, c. 2, s. 2, a. 7, §2, 34th. Pigeau I 683. C. P. a. 175.

In regard to moveables, the claims for work done to them by mechanics is privileged on them as long as the things remain in their possession. Some authors allow the privilege to be exercised afterwards.

Ord. 4 V. c. 30.

With regard to immovables; before the coming into force of the Registry Ordinance, (31st December, 1841,) those who,

P. Hyp. c. 1, s. 1, s. 3, and c. 2, s. 3, 17th f.

by necessary repairs or otherwise, had preserved the property, were privileged on all the property preserved for their claim. And those who had enhanced the value of property, were privileged on their work, or so much as might remain of it only, to the amount of the increased value given by their work to the property. But to ensure those priviliges, the contracts for the work should have been passed by notarial deed, and, where practicable, the state of the premises should have been previously established, and the work received when done under certain formalities, to prevent collusion and fraud. To distinguish the amount of privilege of different workmen, a detailed project or *devis* of the work, previous to its commencement, may be useful if not imperative.

Livonière, p. 358.

Reg. Ord. s. 31.

At present, the privileged creditors,* whose claims shall, and may be registered, in pursuance of the Registry Laws, are

1st. The vendor, &c.

2nd. The lender of money for purchase, &c.

3rd. Co-heirs, and co-partitioners, &c., and

4th. "Architects, builders, or other workmen employed in the building, rebuilding, or repair of buildings, canals, or other erections or works: provided that by an *expert* named by any Judge of the Court of King's Bench†, for the District, or by the Judge of the District Court, in the Judicial District‡, within which, the buildings or premises aforesaid are situated, there shall have been previously made a *procès verbal* establishing the state of the premises, in respect of the works about to be made; and provided also, that within six months of the completion of such works, the same shall have been accepted and received by an *expert*‖, in like manner named; and provided also, that the privilege in such cases, shall in no instance extend beyond the value ascertained by such second *procès verbal* as aforesaid; and shall be reducible to the amount of increased value given to the premises by such works, at the period of the alienation of the real estate, on which the said works shall have been erected or made."§

5th. Lenders of money applied to the payment of the workmen in such cases as just mentioned, provided that the intended application of the money be ascertained by the writing eviden-

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* The Commissioners for revising the Acts and Ordinances of Lower Canada, remark that "Section 31, (unless indeed, it be intended to apply only to privileges created before the Ordinance came into force,) seems to create another exception to the general rule, adopted in Section 29, by continuing legal and tacit, (though not general,) hypothecs in certain cases not so provided for in Section 29." I go upon the supposition, that these privileges are really exceptions to this general rule, at present.

† Or of Queen's Bench.

‡ There are now no such Judges or Courts, the ordinance constituting them being repealed by the Act 7 Vic. c. 16, sec. 53, of which attributes to Circuit Judges certain powers which may extend to such cases.

‖ Thirty days from the *procès verbal* of reception, being allowed for the registration of those privileges without risk.

§ It will consequently be prudent for those workmen to be paid as soon as possible after the work is completed, for fear of its depreciation in value, by time, wear, or other circumstances.

cing the loan, and that it be ascertained by the acquittance of the workmen, that they were paid with such money. These documents should be drawn by Notaries.

It may not be out of place to remark, that when two or more privileges of different natures occur on the same property, or on different parts of a property which is nevertheless sold at a single price for the whole, as it might be between the *bailleur de fonds* or vendor, the builder and others, the value of the land and of the improvements, &c., are separately estimated, and the claimants take their shares out of their particular parts. This process is called in French, *ventilation.*