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ELECTION BALLOTS.

In the case of *Newton* v. *Newall*, recently decided by the Supreme Court of Minnesota, the question of the identity of a candidate voted for by incorrect or misspelled names, and the proper practice in such cases, was before the Court. Although under our system, of making a cross on a ballot on which the names of the candidates are printed, the difficulty is not likely to occur, the following extract from the observations of the judges will be of interest, in relation to the doctrine of *idem sonans*:—"With reference to the name by which a candidate may be sufficiently designated, we regard the following rules to be correct: If, for a certain office, there is but one person running of a given name, say the name of Frank E. Newell, a ballot for 'Newell' simply, without any Christian name or initial thereof, will pass, and should be counted for Frank E. Newell, and so should a ballot for Frank Newell, or F. E. Newell, or F. Newell. So, if to designate the person voted for, letters are used which do not properly spell the name of 'Newell,' but do spell a word which is *idem sonans*, this should be counted. All these should be counted, for the reason that they designate the person intended to be voted for with reasonable certainty. But unless the ballot is of one of these kinds, or of equivalent certainty (as it possibly may be, though we do not perceive how), it should be rejected. Therefore, a ballot for 'Nall,' or 'Null,' or 'Neden,' or 'W. Null,' should not be counted for Newell. Neither should a ballot for 'New,' 'or 'Newt,' or 'Newto,' or 'Newn,' or 'Neto,' be counted for a candidate of the name of Newton. 'Nuton' and 'Newten' may, however, be properly counted for such candidate. What would be the effect of proof before the District Court that a candidate for an office was commonly known by some abbreviation of his surname, as well as by his full surname, and whether upon such proof a vote by such abbreviation could properly be counted for such candidate, are questions that have not been discussed in this case, and which we are not now called upon to decide. Certainly such proof would not be admissible before a board of town or county canvassers." To this we will only add that the determination of what is *idem sonans* must be affected in some degree by circumstances. For example, to take the name that was in question in the above case, if a French-Canadian voter spelled the name "Newto," we do not think the ballot should be rejected. And if the name of the candidate were French, as, for example, Mignault, the ballot of an English voter in which the name was given as "Meenot" or "Migno" should not be rejected. The attempts of a person of one nationality to pronounce or spell the name of a person belonging to a different nationality are sometimes amusing. We remember, many years ago, being puzzled by a reference to an eminent lawyer as "Mr. Jute," but a moment's reflection suggested that the gentleman alluded to was Mr. Doutre.

M'GILL LAW FACULTY.

The appointment of Mr. W. H. Kerr, Q.C., as Dean of the Law Faculty of McGill University, has been announced, and has proved to be an extremely popular one with the *alumni* of the Faculty. We think there is reason to congratulate the University on this appointment. Mr. Kerr is not only a barrister of eminence in the profession, and a gentleman who will fill the office with dignity, but he possesses a qualification which is perhaps more valuable, as it is certainly more rare,—and that is an unaffected sympathy with the aims and studies of young men, which disposes him, at much sacrifice of time and personal ease, to bestow, with the utmost readiness and courtesy, the valuable aid which ripe experience can afford to youth.

THE LATE CHIEF JUSTICE.

London *Truth* gives a pen and ink portrait of the late Chief Justice Cockburn in the following terms:—"At about half-past four or five o'clock on most afternoons when the courts were sitting in Westminster, a little old man shabbily dressed, and—except for the bright piercing glance with which he now and then

eyed a passer-by—singularly insignificant in appearance, might have been met wending his way along Waterloo Place and Piccadilly. Those who, an hour before, had seen the Lord Chief Justice of England in his court, arrayed in wig and ermine, and listened to him, as, in a soft musical voice, he rendered some knotty point of law as clear as crystal, would hardly have recognized him as the same man." The London *Law Times* touches delicately on a well-known fault of the deceased:—"It is equally certain that, whilst he carried on to the bench this high code of honor, the very loftiest sentiments which could animate a judge, the deepest regard for his office, and the keenest sense of its responsibilities, he never thoroughly shook off the passion of the advocate. If there is one fault which can be laid to his charge as a judge, it is that with too rapid a judgment he formed his opinion, basing it frequently upon the evidence and bearing of particular witnesses. The opinion formed, it was put forward in the summing up with the art of the advocate, repressed more or less, but still perceptible, and occasioning sometimes the impression that the scales of justice had not been held with that absolute impartiality which is essential to the strict administration of the law." And the *Law Journal* confirms this by the remark: "His charges to juries were masterpieces of popular oratory; and there was little chance for the most skilful counsel if the Lord Chief Justice became convinced of the duty to sum up against him."

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, Feb. 28, 1880.

JETTÉ, J.

BREWSTER v. GRAND TRUNK RAILWAY CO. OF CANADA.

Sale—Hypothecs on property sold—Right of purchaser to obtain resolution of sale.

The text of the judgment as recorded sufficiently explains the point decided:—

"La Cour, etc.....

"Attendu qu'à une vente à l'encan en juin, 1872, d'un terrain situé à Longueuil, appartenant à la Compagnie défenderesse, et offert en vente par lots à bâtir, suivant plan préparé à cette fin, le demandeur a acquis de la défenderesse, qui lui en a passé titre, le 20 décembre 1872, et ce, pour le prix total de $2,430, certains lots de terre désignés et décrits en la déclaration du demandeur comme suit savoir:

"Those certain lots of land situate in the "parish of Longueuil in the County of Chambly, "known as the numbers 39, 40, 46, 47, 71, 72, "73, 74, 76, 80, 176, 177, 178, on a certain plan "of the vendor's property made by Joseph "Rielle, Provincial land Surveyor, and deposited "with the said Theo. Doucet, Notary, the 2nd of "October, 1872, and known and designated as "the numbers 29, 30, 35, and 36, on the plan "and book of reference of the subdivision of lot "No. 197 of the said village of Longueuil, and "as lots numbers Nos. 2, 3, 4, 5, 7, 77, 113, 114 "and 115 on the plan and book of reference "of lot No. 154 of the parish of Longueuil, "without any buildings thereon erected:"

"Attendu que lors de la dite vente, il a été publiquement annoncé par l'encanteur chargé par la défenderesse de faire cette vente, que le titre de la Compagnie défenderesse susdite au terrain vendu était parfait et indiscutable, que le dit terrain était affranchi de toutes redevances seigneuriales, et qu'il n'a alors été fait mention d'aucune hypothèque ou charge pouvant grever le dit terrain;

"Attendu que le grand total produit par la vente des divers lots composant le terrain alors vendu par la défenderesse ne s'élève qu'à une somme n'excédant pas $40,000, et qu'après la dite vente, il a été découvert que le dit terrain, et chaque lot composant icelui, y compris les lots vendus au demandeur, était et est encore grevé et affecté de deux hypothèques générales s'élevant à la somme de $200,000, lesquelles hypothèques étaient, lors de la dite vente, inconnues au demandeur, mais au contraire parfaitement connues de la défenderesse qui en payait les intérêts tous les six mois;

"Attendu que le demandeur, avant d'avoir appris l'existence des dites hypothèques, a payé à la défenderesse partie de son prix d'achat, savoir: une somme de $607.50; qu'il a ensuite construit sur le dit terrain à lui vendu, diverses bâtisses, maisons, bâtiments, etc., et fait diverses améliorations dont le coût s'élève à la

somme de $5,500 courant; qu'il a, en outre, fait marché pour vendre partie de ce terrain à un nommé Fergusson, qui a aussi construit sur cette dernière partie, une maison coûtant la somme de $500 ; que vu l'impossibilité où s'est trouvé le demandeur de donner au dit Fergusson un titre certain au dit lot de terre, il reste à la charge du demandeur; enfin, que les frais et loyaux coûts occasionnés au demandeur par suite de la dite vente s'élèvent à $60, lesquelles diverses sommes forment réunies la somme totale de $6,667.50, cours actuel ;

" Attendu que le demandeur, vû l'existence sur le terrain à lui vendu comme susdit des dites hypothèques de $200,000, lequel montant, dépassant d'une somme énorme son prix d'achat, ne laisse au demandeur aucun espoir de pouvoir jamais utiliser le dit terrain, et l'expose à un danger constant d'expropriation sur action hypothécaire, demande la résolution de la vente à lui faite, et le remboursement des sommes par lui payées et dépensées à l'occasion du dit contrat;

" Attendu que malgré la demande plus considérable faite par le demandeur, la preuve n'établit sa réclamation que jusqu'à concurrence de la dite somme de $6,667.50 en dernier lieu mentionnée ;

" Attendu que la défenderesse a plaidé à l'encontre de la dite demande :

1o. Que le demandeur a acheté avec pleine connaissance des hypothèques grevant le dit terrain, et s'est ainsi exposé aux risques de son dit contrat; et 2o. Que bien que les hypothèques grevant le dit immeuble puissent être une cause de trouble et donner droit au demandeur de demander caution, il n'a pas droit, vû l'article 1535 du Code civil, à autre chose qu'à tel cautionnement, et ce, jusqu'à concurrence seulement de la balance du prix qui reste à payer par le demandeur, savoir: $1,822.50 ;

" Attendu que la preuve ne justifie pas l'allégation de la défenderesse, que le demandeur avait acheté à ses risques et avec connaissance des hypothèques sus-mentionnées; et que la demande du demandeur doit par suite être appréciée au seul point de vue du droit de résolution de la vente, réclamé par le demandeur, à raison des hypothèques considérables qui grèvent les terrains à lui vendus;

" Considérant que c'est un principe fondamental de notre droit civil, principe reconnu et formulé dans l'article 1065 de notre Code, que la condition résolutoire pour cause d'inexécution des obligations de l'une des parties est toujours sous-entendue dans les contrats synallagmatiques ;

" Considérant que dans le contrat de vente, une des obligations principales du vendeur est de mettre la chose vendue en la pleine puissance et possession de l'acheteur, (C. C. 1492), et que cette obligation n'est pas remplie si l'acheteur n'a qu'une propriété incertaine et une possession équivoque et menacée ;

" Considérant que dans l'espèce, l'énormité des hypothèques grevant les immeubles vendus au demandeur, relativement au prix par lui payé, rend impossible la sécurité du titre du demandeur et l'expose au danger permanent d'actions hypothécaires devant avoir pour résultat nécessaire son dépouillement et sa spoliation ;

" Considérant en outre, que par suite de ce danger constant d'éviction, le demandeur est complètement privé des avantages qu'il avait le droit d'attendre de la propriété et possession des dits terrains, et qu'il ne peut ni les revendre, ni les hypothéquer, ni les bâtir, ni les améliorer, et qu'en conséquence, loin d'en pouvoir tirer les fruits et avantages que la loi assure, il se trouve n'avoir entre les mains qu'une propriété forcément inerte et stérile ;

" Considérant que l'article 1535 du Code Civil, en donnant à l'acheteur le droit de se refuser au paiement du prix, non-seulement lorsqu'il est troublé par une action en revendication ou par une action hypothécaire, mais même, lorsqu'il a seulement juste sujet de craindre d'être troublé, n'enlève pas à l'acheteur le droit de demander, s'il le préfère, la résolution de la vente pour cause d'inexécution de la part d'obligation prise par le vendeur conformément à la disposition de l'article 1065 ;

" Considérant que l'acheteur est bien fondé à demander cette résolution lorsque la totalité de son prix d'achat ne pourrait suffire à désintéresser les créanciers hypothécaires, et que, même en payant ce prix entre leurs mains, il resterait encore exposé à être dépouillé de l'immeuble vendu, et que l'offre d'un cautionnement pour le remboursement de ce prix ne peut, dans les circonstances, être déclarée satisfaisante ;

" Considérant enfin que la résolution de la vente en cette cause met le demandeur en droit de réclamer et d'obtenir de la défenderesse,

tant les sommes par lui payées sur le prix de la dite vente, que celles par lui employées aux constructions et améliorations faites sur les dits immeubles, ainsi que les loyaux coûts, le tout s'élevant comme susdit, à la somme de $6,667.50;

"Renvoie les exceptions et défenses de la défenderesse, et adjugeant sur les conclusions du demandeur, déclare la vente faite par la défenderesse au demandeur comme susdit, résolue et annulée à toutes fins que de droit, et en conséquence, casse et annule le titre de la vente passé entre les dites parties le 20 décembre 1872, devant Mtre. Théo. Doucet, notaire, et condamne la défenderesse à rendre et payer au demandeur la dite somme de $6,667.50, cours actuel, avec intérêt sur icelle à compter du 9 janvier 1878, jour de l'assignation, jusqu'à paiement, et les dépens, y compris le coût des pièces produites au soutien de la demande, les dits dépens distraits à Maîtres Davidson & Cushing, avocats du demandeur.

Davidson & Cushing, for the plaintiff.

Geo. Macrae, Q.C., for the defendants.

MONTREAL, December 15, 1880.

JOHNSON, J.

CARTER v. FORD et al.

Sureties in Appeal—Tender.

Sureties in Appeal, when the judgment has been confirmed, and the Court has not granted leave to appeal to the Privy Council, are liable for the costs absolutely, and they have no right to annex a condition to a tender of such costs, that the money shall be returned in the event of the Privy Council granting a special application to appeal, and the judgment being reversed on such appeal.

JOHNSON, J. This is a mere question of costs. The defendants, being sued as securities in appeal, paid the money into Court, and it was taken by the plaintiff under an order of the Court; but the question of the sufficiency of the tender that was originally made, and of the one now made by the *consignation*, still remains. I regret to see that the point in dispute has given rise to some acrimony, but it is really one which, apart from any feeling that it may have given rise to, could suffer no doubt when looked at impartially. Mr. Bethune had received instructions to sue the two bondsmen; and the declaration was drawn (see the evidence of Fisher), when a tender was made of the debt; but unfortunately accompanied by a condition that was inadmissible. This condition was based on the alleged fact that the judgment of our Provincial Court of Appeals had been made the subject of a special application to Her Majesty in Her Privy Council, and the condition asked before paying the money was that the plaintiff should undertake to return it if the judgment should be reversed. The defendants of course had no right to make any condition of the sort; and the tender was declined by Mr. Bethune on that ground, and also because he had no authority to act to that extent for the plaintiff. This was at 3 p.m.; and Mr. Bethune seeing, or fancying he saw, obstacles unnecessarily made to the payment of the money, at once ordered his clerk to lodge the fiat, which was immediately done. After this there was another tender made to Mr. Abbott, who refused on account of the same condition being asked. Whether he was right or whether he was wrong in that refusal is not the question now; for at that time the fiat had been lodged, and the writ was issued the next morning.

The defendants contend that they did not wish to impose any condition, but the notarial tender is here before me, and it says plainly:—"On condition that if the judgment rendered in the said matter be reversed, the money will be returned to them who now pay as Molson's sureties." The defendants had a perfect right to *dénoncer* this appeal to the Privy Council if they pleased, and to reserve their own right to any recourse that the final judgment might entitle them to; but that was a different thing from insisting upon an express condition to restore the money. The judgment might have been reversed, leaving the question of costs in the Provincial Court just where it was, and there might never be any right to get the money back at all. Besides there was no evidence of the fact of the appeal, that the plaintiff was bound to notice. It was said that the mere lodging the fiat gave rise to no costs at all. That is not the point, however. The only point is what is raised by the plea after writ issued, and that is whether the amount of the debt alone was a sufficient tender then. I hold that it was not, but that the costs incurred up to filing of plea were due then; and the offer made in the plea was not a repetition

of the previous offer, for the plea contains no such condition at all; and if it had, the plaintiff could not have got the order for the money, which was made on the express ground that there was no condition—the only ground, indeed, on which the law would allow the plaintiff to take it. Judgment for plaintiff for costs only.

Bethune & Bethune for plaintiff.

Barnard & Monk for defendants.

SUPERIOR COURT.

MONTREAL, Dec. 15, 1880.

JOHNSON, J.

BEAUDRY v. BROWN et vir, and BOWIE, guardian, *mis en cause.*

Guardian—Discharge by lapse of time.

A defendant who becomes voluntary guardian of effects seized under a writ of execution is liable as such to contrainte par corps.

A guardian is discharged by the lapse of a year after his appointment without proceedings.

The plaintiff moved for a rule *nisi* against J. G. Bowie, the guardian named to effects seized under writ of *saisie-gagerie.*

The *mis en cause* answered, 1. That as husband of the defendant he could not be guardian. 2. That more than a year had elapsed since his nomination without any proceedings by the plaintiff on the demand *en saisie-gagerie*, though default had been entered against the defendant.

JOHNSON, J. Two points have been raised:—1st. That the defendant cannot be guardian. The reported decisions are against that pretension, and it is therefore overruled. See *Munn* v. *Halferty*, 1 L. C. R., p. 170; *Brooks* v. *Whitney*, 4 L. C. J., p. 279; *Carley* v. *Hatton*, 15 L. C. J., p. 140.

The second point raised is that more than a year has elapsed since the seizure. I do not know of any case in which this point has come up,—I mean, any reported case. There was a case in Beauharnois, I have heard, of *Baker* v. *McDonald*, in which Judge Belanger held that the guardian was not discharged by the lapse of the year. Doutre, vol. 2, Art. 842, says our Code has not repealed the 20th article of the 19th title of the Ordinance of 1667, which in case of opposition liberated guardians after two months upon a regular demand made for that object; and by Art. 22 of the same ordinance the guardian is discharged one year after his appointment, and *pleno jure*. Rule discharged, but without costs.

A. Dalbec for plaintiff.

Archambault & David for *mis en cause.*

MONTREAL, December 15, 1880.

JOHNSON, J.

THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING v. SIMPSON.

Insolvent—Liability for debt not inventoried.

JOHNSON, J. There is no question about the debt here, which is due under a deed of obligation; but the defendant pleads that he is not liable for costs because since he signed the deed he has become insolvent, and is still an undischarged bankrupt, his assignee having distributed his estate. The plaintiff answers that this is untrue; and that even if it were true, the defendant never disclosed the present claim, and therefore cannot get rid of the costs by operation of the insolvent law which, as far as the plaintiff is concerned, has not been complied with.

There is no proof of record of a due compliance with the act, nor of notice of any sort. The fact of insolvency is proved by the defendant, but that is all. Sec. 90 of the law says, "no costs incurred in suits against the insolvent after due notice has been given according to the provisions of this Act shall rank upon the estate;" etc. That may be the case; and indeed from the evidence of the assignee, there would appear to be no estate to rank upon; but that would not prevent a personal condemnation for the costs. Judgment for debt, interest and costs. The proof that should have been made was that under the 11th section, which we have nothing about.

Trenholme & Taylor for plaintiff.

T. & C. C. de Lorimier, and *Abbott & Co.* for defendant.

SUPERIOR COURT.

MONTREAL, Dec. 15, 1880.

COURT es qual. v. STEWART.

Personal liability where a particular quality is added to signature.

A person who adds the word "Trustee," or other quality to his signature, is personally bound thereby, unless he can show that he signed for a principal, or for an estate, bound by his signature.

JOHNSON, J. The plaintiff here sues as assignee, under the insolvent law, of the Mechanics' Bank, and the action is to recover from the defendant the amount of an undertaking he had with the Bank, and which appears in the shape of a letter to the cashier as follows:—

"Dear Sir,—Please place to the credit of the estate N. Van Alstyne & Co. the enclosed demand note for $700, with the note of Van Alstyne for same amount as collateral. In consideration of this discount I hereby promise to place you in funds for the amount from the first sales of the stock of castings now on hand. Yours, &c., A. B. Stewart, Trustee."

This letter referred to the note of Norman Van Alstyne at four months, for $700, made in the defendant's favor as trustee of the estate of N. Van Alstyne & Co., and by him endorsed, and also to the demand note of the defendant himself to his own order and which he likewise endorsed. The declaration avers an understanding between the defendant and the bank, that payment of his demand note should not be asked until the maturity of the other note. It then avers a demand of payment and protest of the Van Alstyne note, and the personal liability of the defendant, notwithstanding that he put trustee after his signature. The pleadings raise substantially the question that arose in the case of *Brown et al.* v. *Archibald et al.**, in which I held that the defendant was personally liable. That judgment was confirmed in appeal with two Judges dissenting there, so that in the result, there were four Judges against the pretension now raised by the defendant, and two in his favor. On reading the report of the case in appeal, I feel myself bound by the reasoning of Mr. Justice Cross and Mr. Justice Ramsay. In the present case there was a composition by Van Alstyne & Co. with their creditors, following on a previous insolvency, and a trustee, as they called him, was named, *i. e.*, the defendant, just as was done in the case of Archibald and the others. If by the deed of composition in that case the so-called 'trustees,' had no power to bind the estate, the present defendant, Stewart, certainly has none. It belonged to the creditors already, and Stewart only had a supervision of it for their benefit. The leading principle maintained in *Brown* v. *Archibald* is that *the defendant is liable personally unless he can show that he signed as agent for a principal who was bound by the signature.* The proof in the present case is that Stewart gave an undertaking to apply certain proceeds to pay the note. These proceeds were realized, and he applied the money differently. Judgment for plaintiff.

Maclaren & Leet for plaintiff.

Abbott, Tait, Wotherspoon & Abbott for defendant.

* 1 Legal News, 327; 3 Legal News, 42; 24 L. C. J. 85.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 22, 1879.

MONK, RAMSAY, TESSIER, CROSS, JJ., ROUTHIER, J., *ad hoc.*

HUDON et al. (plffs. below), Appellants, and RIVARD (T. S. below), Respondent.

Universal usufructuary legatee—Personal liability—Procedure.

The appeal was from a judgment of the Superior Court, Montreal, March 31, 1876, rejecting the appellants' contestation of the declaration made by the *tiers saisi* Rivard.

In appeal, the judgment was reversed, the Court holding

1. A defendant condemned as universal usufructuary legatee of her deceased husband is in the position of a universal legatee, and is personally bound to pay the amount of the judgment.

2. A garnishee who is summoned to declare what he owes to a defendant designated in the writ as a universal usufructuary legatee, is bound to declare what he owes to such defendant personally, as well as what he may owe

to her in her quality of universal legatee or usufructuary.

3. Where the garnishee declared that he could not state what he owed to the defendant personally, inasmuch as the account between them had not been adjusted, the plaintiff was bound to put the garnishee *en demeure*, and to give him time to settle his account with defendant, and then to have him complete his declaration within a certain delay.

4. The Court, at the final hearing of a contestation of the declaration of a garnishee, has a right to revise a ruling which maintained an objection made by the garnishee to declaring what he owed to a universal usufructuary personally.

The judgment in appeal is as follows :—

" La Cour, etc....

" Considérant que Dame Anathalie Trudel, veuve de feu David Laurent, en qualité d'usufruitière universelle du dit feu David Laurent, est tenu avec ses co-défendeurs au paiement du jugement rendu sur l'action en cette cause ;

" Considérant que le tiers saisi était tenu de déclarer, non seulement ce qu'il pouvait devoir à la défenderesse en sa dite qualité d'usufruitière universelle, mais encore ce qu'il peut lui devoir personnellement, et que la Cour Supérieure, dans le jugement rendu à Montréal, le 31 Mars 1876, et dont est appel, a erré en ne mettant pas le dit tiers saisi en demeure de compléter sa déclaration ;

" Considérant que le jugement dont est appel est erroné sous ce rapport, et que l'état du dossier ne permet pas de rendre un jugement définitif sur la contestation, vû que la déclaration du tiers saisi est incomplète, et que l'interrogatoire du dit tiers saisi a été erronément limité par le juge de première instance ;

" Adjuge et ordonne que le dossier en cette cause soit retransmis devant la Cour Supérieure, pour que le tiers saisi y complète sa déclaration dans le délai, et au jour à être fixé par la Cour Supérieure, ou soit mis en défaut de la compléter, et pour qu'il y soit procédé ultérieurement sur la contestation et la saisie arrêt, frais réservés pour suivre l'issue du procès suivant l'adjudication ultérieure de la Cour Supérieure."

R. & L. Laflamme for appellants.

Loranger, Loranger & Beaudin for respondent.

Hon. T. J. J. Loranger, counsel.

COURT OF REVIEW.

MONTREAL, Dec. 29, 1879.

JOHNSON, JETTÉ, LAFRAMBOISE, JJ.

LALONDE v. ST. DENIS.

[From S. C., Montreal.

Donation—Purchaser of the immoveable donated bound by the obligations of the donee.

The inscription in Review was from a judgment of the Superior Court, Montreal, Rainville, J., July 7, 1879.

JOHNSON, J. The plaintiff, according to custom in this country, gave all her property to her son, among whose obligations was one to furnish a cow while he kept the property. He supplied his mother with the cow, as he had agreed to do; but he, some time afterwards, sold the property to the defendant, who assumed the son's obligations to the plaintiff. Mother and son lived together *à la fortune du pot* for some time in execution of the deed of donation; but when the property changed hands, he sold the cow that had hitherto been used by the old lady, who now sues the defendant for the value of the milk. He, the defendant, is no doubt in the shoes of the son, who was the original *donataire;* and he pleads to the action that the plaintiff permitted, and consented to, the sale of the cow by her son. This, however, is not proved. Then, the defendant pleads that by the terms of the donation the donee was indeed to furnish a cow, which he did; but was only obliged to furnish another to replace it in case of its death or sickness. The judgment now in review condemned the defendant to pay $15, and we confirm that judgment. It appears to us quite certain that the defendant is bound to execute the obligations of the donee, who was held to furnish a cow, which the plaintiff is entitled to have and use; and as long as she does not lose possession of it by any act of her own, she is entitled to have it replaced. It is not because the original donee bound himself specially to furnish another in certain cases that he, or the defendant who is now in his place, should be absolved from furnishing a cow at all.

Judgment confirmed.

Loranger & Co. for plaintiff.

Doutre & Co. for defendant.

SUPERIOR COURT.

MONTREAL, Sept. 25, 1880.

JETTE, J.

ARCHAMBAULT ès qual. v. CITIZENS INS. CO., and ARCHAMBAULT, mis en cause.

Testamentary Executor—Inventory—Possession.

An inventory made by a testamentary executor or universal legatee in perfect good faith (sincèrement et loyalement) is not invalidated by the omission of unimportant formalities.

A testamentary executor, for the purposes of the execution of the will, is seized of the moveable property of the succession, and may claim possession of it against the legatee (C.C. 918).

The facts of the case were these: E. Z. Archambault died leaving a will, by which he left a number of legacies, including one to his brother, the *mis en cause*, of his life insurance, $2,000. The plaintiff, his nephew, was appointed universal legatee and testamentary executor. The latter accepted under benefit of inventory, and subsequently, finding the legacies exceeded the value of the estate, he renounced, retaining merely his quality of testamentary executor.

By the present action he claimed the life insurance money, which the Company refused to give up unless the special legatee countersigned the receipt. The special legatee refused to do this, and he was made a party to the cause.

The *mis en cause* pleaded, among other things, that the inventory was not regularly made, and that he, as special legatee, was seized of the life insurance money.

JETTÉ, J., said it appeared by the evidence that the notices for the first meetings were perfectly regular, and that objection was only taken to the notice calling the final meeting. The *mis en cause*, examined as a witness, admitted that the inventory had been made "sincèrement et loyalement." Under these circumstances the special legatee had no grievance, and the objection to the inventory fell to the ground.

Then, as to the possession of the testamentary executor, Articles 918 and 919 of the Civil Code were decisive on this point. Testamentary executors may claim possession of the moveable property of the succession, even against the legatee.

Judgment for plaintiff.

Archambault & Archambault for plaintiff.

Abbott & Co. for the Insurance Company.

Lacoste & Co. for the *mis en cause*.

RECENT ENGLISH DECISIONS.

Infant—Promise to Marry—Breach of Promise.—In July, 1875, the plaintiff and defendant (both of them then under the age of twenty-one), mutually agreed to marry one another. The engagement continued without any definite understanding as to when the marriage was to take place until March, 1879, when (both having attained the age of twenty-one), the defendant asked the plaintiff, in the presence of her father, to fix the wedding day. She fixed it for the 5th of June, to which the defendant assented; but ultimately he broke his promise. *Held*, by Denman and Lindley, JJ., that what took place in March, 1879, when the wedding day was fixed, was a fresh promise, made after the defendant came of age, and upon a good consideration. *Ditcham* v. *Worrall*, L. R. 5 C. P. D. 410.

Charter Party—Means for discharging Cargo—Demurrage.—A charter-party was entered into, by which a vessel was to take on board a cargo of steel rails and fastenings, and proceed therewith to the port of East London, in South Africa. In the charter-party was this stipulation: "The cargo is to be discharged with all despatch, according to the custom of the port." The discharge of such a cargo could only be effected there by a warp and lighters. These were under the absolute control of a Company, to which the governmental authorities had transferred all their powers. The Company allowed vessels the use of the warp and lighters in turn, making no exception in favor of any vessels except mail steamers, which, on arriving, were provided for, to the exclusion of other vessels, whether of the Government or of private individuals. The ship arrived at the port, found a great number of vessels there; the number of lighters was insufficient, and the ship could not obtain its turn until more than thirty-one working days had elapsed after its arrival. There was no delay attributable to the master or crew, except what was thus occasioned by the custom of the port. *Held*, that in this case the ship-owner was not entitled to maintain an action against the charterer for demurrage. *Postlethwaite* v. *Freeland*, L. R. 5 App. Cas. 599.

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