The Legal News.

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STAMPS ON PROMISSORY NOTES.

Our notes of cases this week contain a decision by Mr. Justice Chagnon in *Filion* v. *Roy*, in which the learned judge differs from the view taken by Mr. Justice Taschereau in *Dickison* v. *Normandeau* (*ante*, p. 136). In the latter case it was ruled that the holder of an unstamped promissory note may still make it valid by double stamping where he would have had the right to do so if the Repealing Act had not been passed. The point is evidently not free from difficulty, and the question will probably be discussed before the Court of Appeal. We observe, however, that a case has been brought before the Queen's Bench Division at Toronto, *Coughlin* v. *Clark*, in which the same point is raised. It is an appeal from the judgment of Wilson, C. J., who tried the case without a jury at Brampton at the last assizes, and gave judgment for the plaintiff for $630 upon a promissory note. The appeal is taken on the ground that the note was not stamped at its maturity before the repeal of the Stamp Act, and that double stamping after the repeal does not cure the defect. The defendant also sets up the Statute of Frauds as against the plaintiff's right to recover upon the consideration. Judgment has been reserved, but it appears that the opinion of Chief Justice Wilson agrees with that of Mr. Justice Taschereau.

JUDICIAL SALARIES.

The question of re-adjusting the salaries of the Judges of the Superior Courts came before the House of Commons on the 19th May, and the fact seems to have been admitted by the Government that the salaries of those who reside in the large cities are inadequate. Mr. McCarthy pointed out that the Judges in Canada receive less than the Judges of any other colony under the British flag with one or two insignificant exceptions. In Jamaica, for instance, the Chief Justice receives £2,500 sterling, or about $12,500, while the puisné judges are paid £1,500 sterling each. In the Cape of Good Hope the salary is £2,000 sterling, and in New South Wales, a colony with a population of 749,000, it is £2,600. The Premier showed a disposition to accede to the wishes of the House, the principal objection being that the smaller provinces would expect a proportionate increase. This will hardly seem a satisfactory reason, to those who are admittedly underpaid, why their claims should be deferred. We append, from the *Commons Debates*, a portion of the observations of the Premier :—

"*Sir John A. Macdonald.*—I have listened with great interest to the remarks of my brethren of the Bar and members of this House as to the deficiency of the amount of salaries paid to the Judges. Those remarks would have had greater relevancy if there was a proposition before the House to raise the salaries of the Judges, because as such increases come from the public Treasury they require justification as to the reasonableness of the amounts proposed. This, however, is not the object of these resolutions. However, as the matter has been mooted, I will say that a strong feeling exists in the Province of Ontario that the Judges of the Superior Courts are insufficiently paid, and that in the future the present salaries will not command the best talent for the Bench. Hitherto, I believe, they have been sufficient, and I think the present state of the Bench, the standing of the gentlemen composing the Bench, shows that the salaries were, at all events sufficient to induce them at the time to accept office. There is a feeling among the Bench and Bar in Ontario that the incomes of leading counsel have so much increased in consequence of the increased wealth of the country, that the salaries at present paid to the Judges are insufficient to induce leading counsel to retire to the quiet and dignity of the Bench. I believe, also, the same feeling prevailed in the city of Montreal, among the professional and commercial classes there, that the Judges are not sufficiently remunerated to secure the best talent for the Bench. I do not hear the same complaint from other parts of the Dominion, except to-day, when it was mentioned by hon. members from the Province of Prince Edward Island. The difficulty the Government have in dealing with this question is, that the moment they deal with the salaries of the Judges in any one Province, there arises a corresponding demand, although the same necessity may not exist, from all the other Provinces. This is

the difficulty which the Government felt, and this together with other circumstances of a temporary nature, with which I need not trouble the Committee, prevented the Government coming down with any measure during the present Session. They must carefully consider not only the position of the Bench in Ontario and the district of Montreal, but the position of the Bench in all the Provinces, and reasonable requirements, and this forces the Government, whenever it deals with this question, to consider the whole question as affecting the Bench of the various Provinces. With reference to the Province of Ontario, a similar demand is made for the increase of the salaries of the County Judges, who are very numerous. That also will be taken into consideration. In answer to the suggestions of my hon. friend from North Simcoe (Mr. McCarthy) I will say that the Government intend to address themselves during Recess with the view of studying the pressure and the reasons of the pressure that exists in the Province of Ontario and Montreal, and is brought to bear on the Government in this relation, and will come down with some general scheme at the next Session."

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, April 30, 1883.

Before TORRANCE, DOHERTY, RAINVILLE, JJ.

LIZOTTE es qual. v. DESCHENEAU.

Action en déclaration de paternité—Proof of paternity.

An action en déclaration de paternité may be maintained, where it is proved that the defendant had connection with the mother at the time, though it also appear that others were guilty with him.

TORRANCE, J. This is an action *en déclaration de paternité*. The plaintiff is representing his minor daughter, a girl of 15 or 16, who gave birth to an illegitimate son on the 17th January, 1882. An enormous mass of evidence has been taken, some 900 pages, which the Court was obliged carefully to examine. The defendant, Henri Descheneau, was charged with being the father of the child. The Court at Sorel held that though there were certain circumstances against the defendant, yet the material fact, namely, the paternity, had not been proved. The evidence is entirely circumstantial against the defendant. Mme. Descoteau, *née* Delphinée Bibeau, lived close to the minor, Arpine Lizotte, and deposed that defendant came to the house in April, 1881, and asked if Bernier, the master, was in. She told him that Bernier and his wife were away, but that Arpine was in. He said he had tried the door and found it barred. She said, nevertheless, Arpine was there. He then got in. On another occasion he came during mass. All were out but Arpine. Seeing them together, Mme. Descoteau thought they had "des discours amoureux." Another witness Mme. Lauzière, testified to the defendant going to the house where Arpine was, in the absence of her guardian and everybody else. Joseph Lauzière, the servant of Bernier, says he found Arpine and the defendant in the doorway of Arpine's room. They had an air of confusion—*"l'air tout bouleversé."* They shut the door and drew the curtain. The defendant, joking about her, said: "Qu'il allait la mettre couver." It is true that this witness bears an unenviable reputation, but his evidence is not without corroboration. Israel Lauzière says that Henri Descoteau went to see Arpine *en cachette* of her guardians—namely, Bernier and his wife. Then we have the declaration of Arpine when in the pains of labor and apprehensive that she might die. She said that Henri was the father, meaning the defendant. The story told by Mr. Blondin, the County Registrar, has some weight in it. When the birth took place they wished for evidence of the paternity. The Descheneau family were interrogated, and half a dozen persons were named who could give information. Blondin saw these different persons, and concluded that the defendant was the father. The father of defendant offered $50 to stop the suit, and his lawyer, or the lawyer of the defendant, offered $100 in settlement. Blondin further said that the child was *un témoignage terrible vivant contre le défendeur.*

It was said that the girl was *légère.* But this question was not the important one. She may have been intimate with others. The important question here was this: Was the defendant guilty, &c.? If he were guilty and others were guilty with him it did not exonerate him. All were jointly and severally liable. Anselme Dechesneau, the brother of Henri, swears that he had connection with the girl again and again. Another brother, a lad of seventeen,

swore that he took indecent liberties with Arpine again and again, and that she repeatedly did the same thing with him. All this reveals a deplorable state of morals in these families, but the defendant should not escape, and the Court are strongly of opinion that his condemnation will tend to the doing of justice.

Judgment reversed, and the defendant condemned to pay $100 damages, and $4 per month alimentary allowance, until the child attains the age of 14.

J. B. Brousseau, for plaintiff.
A. Germain, for defendant.

COURT OF REVIEW.

MONTREAL, April 30, 1883.

Before TORRANCE, DOHERTY, RAINVILLE, JJ.

BRICE v. THE MORTON DAIRY FARMING AND COLONIZATION CO.

Promissory Note of Corporation — Evidence — Authority of President to sign.

This was a judgment against the company for $8,175.71. The defendant pleaded that Thomas H. Hodgson, who signed, as President, the note upon which the defendant was condemned, was not authorized. The defendant was condemned to pay.

Before the Court of Review two objections were made by the defendant. 1st, that the notice of trial was not regular. 2nd, that the authority of the President to sign the note for the defendant was not proved.

TORRANCE, J. We find that the plaintiff inscribed for trial, and filed his inscription on the 3rd March for trial on the 20th March. He subsequently, on the 9th March, gave notice to the defendant's attorneys for the 20th March. All this was perfectly regular, and the Court so held on a motion made by the defendant to strike the inscription.

Next, as to the authority of the president to sign the note. The counsel for defendant, Mr. Geoffrion, referred us to the Canada Joint Stock Companies Act, 1877, section 66. This section, after saying that any note made by an officer of a company in general accordance with his powers as such under the by-laws of the company, shall be binding on the company, enacts further, "in no case shall it be necessary to prove that the same was made in pursuance of any by-law," &c. The burden of proof is on the defendant to disprove the authority of the president, which he has failed to do.

Judgment confirmed.

Ritchie, for plaintiff.
Geoffrion & Co., for defendant.

SUPERIOR COURT.

MONTREAL, May 1, 1883.

Before LORANGER, J.

In the matter of MULHOLLAND & BAKER, Insolvents, and JOHN FAIR, Assignee, and THE MERCHANTS BANK OF CANADA, Claimants, and THE CONSOLIDATED BANK OF CANADA, contestants.

Insolvent Estate—Interest on Claims.

Held, where there is a surplus in the private estate of one member of an insolvent firm after paying his creditors the amount of their claims as filed, but a deficiency in the firm estate to pay firm creditors, the latter have no claim upon such surplus until the private creditors, who have interest-bearing claims, have been paid interest upon the amount of their claims, from the date of filing the same till payment.

In a dividend sheet prepared and published in this matter, the Merchants Bank, claimants upon the estate of Henry Mulholland, one of the members of the firm of Mulholland & Baker, having an interest-bearing claim, were collocated for the sum of $409.91, for interest upon the full amount of their claim as filed, from the date of filing the same up to the date fixed for payment thereof.

This collocation was contested by the Consolidated Bank, claimants upon the estate of the firm, upon the grounds that on their claim of $250,000, they had only been collocated for $17,839.14; that the Merchants Bank as creditors upon the individual estate of Henry Mulholland, had been paid in full, the amount of their claim as filed; that the $400.91 was solely for interest, and the collocation thereof was illegal and operated an injustice to the firm creditors, who were entitled to have such sum, and all sums purporting to be a surplus of the proceeds of such individual estate, brought into the firm estate for the benefit of firm creditors.

The Merchants Bank answered the contestation by alleging: (1) That the Consolidated Bank had no *locus standi*, having no longer a cor-

porate existence; and (2) That the Merchants Bank as creditors upon the individual estate of Henry Mulholland, were entitled to be paid their debt in full, which included interest as collocated, before any portion of the proceeds of that estate could go to the benefit of firm creditors.

The proof established that the firm creditors had only received a dividend of so much on the dollar; that the claim of the Merchants Bank was an interest-bearing one; that the Bank had received twenty shillings in the pound upon the amount of the claim as filed, and that the collocation of $409.91 was solely for interest upon the amount of the claim from date of filing thereof till the date of payment.

At the argument, *Robertson*, for the Consolidated Bank, contended:

By the Act authorizing the winding up of the Consolidated Bank of Canada, (43 Vic. Chap. 46), it was enacted that liquidators should be appointed who should have all the administrative powers of Directors, and they were empowered, in the event of an offer being made for the purchase of the remaining assets of the Bank *en bloc*, to submit the same to the shareholders, and, if approved, to execute a conveyance thereof to the purchaser. Such sale had been duly effected to the Canadian Securities Company; and by the deed of conveyance, it was expressly stipulated that the Company should have the right to use the name of the Bank in legal proceedings.

By a subsequent Act of the Dominion Parliament (45 Vic. chap. 65) this deed had been in effect confirmed; and it was enacted that the Company should fulfil all the duties and have all the powers and responsibilities of the liquidators.

The action was therefore well brought in the name of the Consolidated Bank of Canada.

As to the right of the firm creditors to the surplus in the individual estate of Henry Mulholland, section 80 of the Insolvent Act provided that all debts due and payable by the insolvent at the time of the execution of a deed of assignment, or at the time of the issue of the writ of attachment under the Act, and all debts due, but not then actually payable, subject to rebate of interest, should have the right to rank upon the estate of the insolvent.

Section 88 provides: "If the insolvent owes "debts, both individually and as a member of a "co-partnership or as a member of two different "co-partnerships, the claims against him shall "rank first upon the estate, by which the debts "they represent were contracted, and shall only "rank upon the other after all the creditors of "that other have been paid in full."

The words "paid in full" in section 88 refer to the amount of the claims filed, as provided in sec. 80. The claims upon Henry Mulholland's estate had been paid in full, within the meaning of sec. 88, as the creditors had received 20 shillings in the pound on their claims as filed,—and hence any surplus should go to firm creditors.

Tait, Q.C., for Merchants Bank:—

The Consolidated Bank of Canada has no longer any corporate existence, and no suit or proceeding can be taken in its corporate name. All its assets are vested in the Canadian Securities Company, cap. 65. The present proceeding therefore cannot be maintained.

The interest of the claimants to raise this question, consists in this, amongst other things, that a judgment in their favor against a non-existent and altogether fictitious contestant, would be no bar to a similar proceeding by the Canadian Securities Company. And also in this, that the claimant has no remedy for the costs incurred in these proceedings, if judgment should be rendered in his favor. The claimant in this case, if successful, would not obtain his costs under any execution or other writ, but would be obliged to institute a new suit against the Canadian Securities Company to recover those costs. And it is impossible to say how far the claimant could establish any liability against the Canadian Securities Company.

If this proceeding is for the benefit of the Canadian Securities Company, it should have been instituted in their own name, as being vested with the rights of the Bank; or as its liquidators.

Section 80 of the Insolvent Act contemplates a deficiency in the assets of the insolvent to meet his liabilities, and therefore provides a common basis upon which all creditors shall rank upon the estate, so that one shall not have an undue preference over the other. But this section does not contemplate that the creditors shall be restricted to receiving from the estate the precise amount of their claims as limited by

the said section, should there be a surplus of assets over liabilities. Section 99 of said Act provides, that if any balance remains of the estate of the insolvent, or of the proceeds thereof after "payment in full" of all debts due by the insolvent, such balance is to be paid over to insolvent.

If interest was not included in the words "payment in full of all debts due by the insolvent," found in this section, fraud could be perpetrated by a person upon his creditors. By assigning he could escape the payment of interest beyond the date of the insolvency, and after payment of the amount of claims as filed, receive back the surplus of his estate, thus saving interest from the date of insolvency till payment of claim.

In this matter the estate of Henry Mulholland, individually, is more than sufficient to pay his individual creditors their debts in full; and under these circumstances the claimant as a creditor upon the estate of Henry Mulholland individually is, under section 88 of the Insolvent Act, entitled to be paid his debt in full, before any portion of said individual estate can go into the firm estate for the benefit of the firm creditors.

The firm creditors do not stand in any better position with regard to the surplus in the estate after paying the debts in full of the creditors of Henry Mulholland individually than Henry Mulholland himself would stand with regard to such surplus, supposing there were no firm creditors. The language is the same in section 88 as in section 99. In the last named section, the insolvent gets any balance remaining after "*payment in full*" of all debts due by him. In section 88 the firm creditors would get the balance remaining after the creditors of the individual estate have been "paid in full." The principle laid down in the Insolvent Act is the same as that to be found in article 1889, C. C. and the Consolidated Statutes of Lower Canada, cap. 65, sec. 6.

After a recital of the pleadings the judgment proceeded as follows:—

"La Cour, adjugeant sur le premier point:—

"Attendu que par l'Acte de Cession ci-dessus cité du 19 Aout, 1881, par la Banque Consolidée à la Compagnie de Suretés Canadienne il est stipulé que cette dite Compagnie aura le droit de se servir pour les fins de la perception ou la protection des créances qui lui sont cédées dans toutes les poursuites au nom de la dite Banque Consolidée;

"Attendu que par le chap. 65 de la 45 Vict. la dite Compagnie de Suretés Canadienne est autorisée comme les liquidateurs de la dite Banque l'étaient eux-mêmes sous l'autorité de l'acte 43 Vict. chap. 46, à se servir du nom de la dite Banque pour les fins de la liquidation de ses affaires;

"Renvoie cette partie de la contestation de la Merchants Bank of Canada, et déclare que la contestation produite au nom de la dite Banque Consolidée est valablement produite;

"Sur la seconde question soulevée par la dite contestation:

"Attendu que les créanciers de Henry Mulholland ont sur ses biens personnels une préférence sur les créanciers de la Société Mulholland & Baker dont ils faisaient partie, que ceux-ci ne peuvent réclamer que le surplus restant de ses biens après le paiement de ses dettes, aux termes des sections 88, 89 de l'acte de faillite de 1875 et ses amendements et de l'article 1899 du Code Civil; que les biens personnels du dit Henry Mulholland ayant été suffisants pour payer ses dettes en entier, capital et intérêt, la créancière The Merchants Bank of Canada, dont la créance porte intérêt suivant la loi, a le droit d'en recevoir le montant calculé jusqu'au jour du payment, savoir: le 23 Janvier dernier, jour où la feuille de dividende était faite payable; que la faillite de son débiteur personnel n'a pas eu l'effet d'empêcher les intérêts de courir en sa faveur et que la Banque Consolidée est sans droit à lui contester ces intérêts;

"La Cour renvoie la contestation de la dite Banque Consolidée contestante et maintient la dite réclamation de la dite The Merchants Bank of Canada, en son entier, avec dépens distraits à Messieurs Abbott, Tait & Abbotts, Avocats des Réclamants."

Abbott, Tait & Abbotts for claimants.
Robertson, Ritchie & Fleet for contestants.

SUPERIOR COURT.

MONTREAL, May 1, 1883.

Before LORANGER, J.

Ross et al. v. O'LEARY, and Ross et al., Petrs.

Execution—Contempt of Court.

Held, that a defendant who induces a bailiff, charged with a writ of execution against him, not to

seize his goods and effects, but to accompany him to the plaintiff's for the purpose of effecting a settlement, and in the interval between the bailiff's leaving his place and returning again to make seizure, removes part of his goods, will be declared to be in contempt of Court, under articles 782 C. C. P. and 2273 C. C., and will be imprisoned in the common gaol until he satisfies the amount of the debt, interest and costs.

The judgment of the Court is as follows :—

" La Cour après avoir entendu les parties sur la motion du 13 septembre 1883, pour contrainte par corps contre le défendeur, examiné la preuve et les pièces produites au dossier, et avoir sur le tout délibéré ;

" Considérant qu'il appert par le retour de l'huissier chargé du bref d'exécution en cette cause que le dix-huitième jour du mois d'août dernier il se serait présenté au domicile du défendeur pour exécuter le dit bref, que sur demande de ce dernier il aurait sursis à l'exécution du dit bref pour se rendre chez le demandeur sur le but d'effectuer un réglement, et que vu l'absence du demandeur de son domicile il avait sur la promesse du défendeur de ne rien enlever des lieux occupées par lui, il aurait remis au lendemain, le 19 août, l'exécution du dit bref ; que le lendemain s'étant présenté au domicile du dit défendeur pour exécuter le dit bref, il aurait constaté qu'il en avait enlevé plusieurs meubles, entre autres un piano qui s'y trouvait, le dit jour dix-huit août lors de la première visite du dit huissier ;

" Considérant qu'à raison des faits ci-dessus le demandeur a demandé par sa motion du 13 septembre, la contrainte par corps aux termes des articles 2273 et 783 du Code Civil et de Procédure Civile ;

" Considérant que le défendeur a plaidé à cette motion ; 1o. Que le demandeur ayant fait arrêter le défendeur sur *Capias* pour les causes mentionnées dans la dite motion, il ne pouvait lui, défendeur, être contraint par corps deux fois pour la même cause et que la motion pour contrainte était contraire à la loi ; 2o. Que le piano et les meubles qui avaient été enlevés des lieux occupés par le défendeur étaient la propriété de sa fille Kate O'Leary, qui les avait enlevées elle-même et sans sa participation ;

" Considérant qu'il n'existe en la présente cause aucune preuve de prétendre *capias* émané contre le défendeur, ce dernier n'ayant fait aucune preuve sur ce fait ;

" Considérant qu'il a été prouvé que le dit défendeur a enlevé des lieux occupés par lui après la première visite de l'huissier, le dix-huit août dernier, un piano et un sofa, et que ces meubles n'ont pu en conséquence être saisis par le dit huissier ;

" Considérant que le défendeur n'a pas prouvé que le dit piano ni le dit sofa fussent la propriété de sa fille Kate O'Leary, mais qu'au contraire il a été prouvé que ces meubles ont été achetés et payés par lui ;

" Considérant que le rapport de l'huissier saisissant sur le dit bref d'exécution n'a pas été contesté et fait preuve contre le défendeur ;

" Considérant qu'à raison des faits ci-dessus le défendeur est aux termes de l'article 782 du Code de Procédure Civile contraignable par corps, et que la motion du défendeur est bien fondée ;

" Maintient la dite motion, déclare absolue la règle pour contrainte par corps obtenue contre le défendeur, et ordonne que le dit défendeur soit contraint par corps et emprisonné dans la prison commune du district de Montréal jusqu'à ce qu'il ait satisfait à la balance due sur le bref d'exécution en cette cause en capital, intérêt et frais du dit bref, savoir la somme de $230.61 cours actuel, dont $126.76, montant, du jugement rendu en cette cause contre le défendeur en faveur des demandeurs le premier jour de février, 1868, et $103.85 pour balance d'intérêt accru sur ce montant, avec intérêt sur la dite somme de $230.61 à compter du onze septembre, 1882, date de la signification de la dite motion pour règle, et, en autre, jusqu'à ce qu'il ait satisfait et payé les frais sur la dite motion pour règle, lesquels s'élèvent à la somme de $24.55, formant avec la somme ci-dessus un total de $255.16 courant ; le tout avec dépens distraits à Maître Cooke, avocat des demandeurs."

J. P. Cooke for petitioner.

D. Barry for defendant.

CIRCUIT COURT.

DISTRICT OF IBERVILLE, April 30, 1883.

Before CHAGNON, J.

FILION v. ROY.

Promissory Note—Stamp duty—Effect of the Repealing Act as to right to affix double stamps.

PER CURIAM. Les demandeurs réclament du défendeur le montant d'un billet dont ce dernier est le faiseur. Ce billet est daté d'août 1876, et n'a été timbré par les demandeurs qu'en février 1883, c'est-à-dire depuis l'abolition de la loi relative aux timbres. Les demandeurs y ont apposé doubles timbres et même au-delà, ont cancellé les timbres de la manière dont l'exigeait le statut avant son abrogation et ont ensuite pris leur action.

Le défendeur qui est comme je le disais tout à l'heure, le faiseur du billet, plaide que le billet est nul parce qu'il n'a pas été dûment estampillé, et parce que les timbres qui y ont été apposés l'ont été sans droit.

Le statut relatif aux timbres, avant son abrogation, permettait au porteur de l'instrument non timbré dans le temps où il aurait dû l'être, d'y apposer doubles timbres, et par là de le valider, pourvu que si la validité de ce billet était ensuite questionnée dans la poursuite faite pour son recouvrement, le porteur pût démontrer que c'était par suite d'une simple erreur ou inadvertance et non dans le but de violer la loi qu'il ne l'avait pas tout d'abord timbré.

Ce droit du porteur de valider l'effet en y apposant doubles timbres lui était consacré par la s. 2 du chap. 47, 37 Vict. 1874, amendant les actes primitifs, et encore par la refonte des statuts relatifs aux timbres, 42 Vict. ch. 17, s. 13.

L'acte d'abrogation de la loi des timbres a-t-il eu l'effet de faire perdre ce droit au porteur ?

Cet acte d'abrogation 45 Vict., ch. 1, déclare qu'aucun droit ne sera payable sur aucun billet ou lettre de change fait ou tiré après le 4 mars 1882, et qu'à compter de cette dernière date, l'acte 42 Vict. contenant la refonte de la loi des timbres, lequel acte avait déjà rappelé la loi antérieure à ce sujet, serait abrogé. Jusque là, il y aurait certainement peu d'espoir pour le porteur en défaut.

Mais il y a des réserves, et ce sont ces réserves qu'il importe d'examiner dans l'espèce.

L'acte d'abrogation ajoute à son décret d'abolition :

" Pourvu toujours que toutes choses légale-
" ment faites et tous droits acquis en vertu du
" dit acte, ou de tout acte qu'il abroge restent
" valides....."

Or, si le porteur a, nonobstant l'abolition, conservé sa faculté d'apposer doubles timbres, ce ne peut être qu'en vertu de la réserve dont je viens de faire mention.

Le statut dit : " Toutes choses légalement " faites lors de l'abolition resteront valides." Sûrement le porteur actuel, le demandeur, ne peut trouver la consécration de son droit dans cette réserve ; car lors de l'abolition, il n'avait encore rien fait. Je comprends que si lors de l'abolition, il avait déjà apposé doubles timbres, et que la question de bonne ou mauvaise foi seulement se fût présentée devant le tribunal depuis l'abolition, cette question de bonne ou mauvaise foi aurait pu être traitée depuis l'abolition sans nuire à sa position ; mais dans la cause actuelle, il n'avait encore rien fait légalement, relativement à son billet avant l'acte d'abrogation.

Ce dernier acte dit encore : " Tous droits acquis en vertu de l'acte abrogé resteront valides." Le demandeur avait-il eu droit acquis dans son billet et dans la somme qui en faisait l'objet lors de l'acte d'abrogation ? Le billet n'était pas timbré et il était nul, absolument *void*. Si un droit était alors acquis au profit de l'une ou de l'autre des deux parties, il me semble que c'était plutôt le défendeur qui avait ce droit acquis. Car lors de l'acte d'abolition, le billet était nul, et conséquemment le défendeur n'était plus dès lors obligé de le payer.

Le droit que l'acte des timbres permettait au porteur d'exercer en apposant doubles timbres, sauf la question de bonne ou mauvaise foi, ne peut être ce que l'acte d'abrogation appelle les droits acquis. Cette faculté réservée au porteur de corriger l'erreur commise et de soumettre à la Cour sa bonne ou mauvaise foi, était une de ces facultés que toutes les lois donnent plus ou moins aux parties que la loi entend réglementer.

Mais ces prétendus droits disparaissent avec l'abolition de la loi. Les parties restent alors avec leurs droits acquis, c'est-à-dire avec leurs droits tels qu'ils les avaient alors exercés. L'exercice ou non exercice de tels droits a fait acquérir une position légale à l'une et à l'autre des parties. Et c'est cette position légale et

nulle autre que l'acte d'abrogation entend réserver, lorsqu'il dit que les droits acquis seront valides. Les expressions du législateur ont leur signification bien claire, et cette signification ne peut être autre que celle que je leur donne. S'il s'était agi de conserver au porteur la faculté d'apposer doubles timbres, l'acte d'abrogation lui aurait réservé nommément cette faculté, et aurait dit que la faculté du porteur d'apposer doubles timbres resterait valide. Cette expression "droits acquis devront rester valides" ne peut se rapporter qu'à des droits acquis dans l'effet (billet ou lettre de change) assujetti au droit de timbres.

Mais on dira :—Comment le faiseur lui-même pourra-t-il plaider cela? L'invalidité du billet est la conséquence de sa propre faute et de sa propre négligence; comment peut-il se libérer en se servant comme moyen de libération, de sa propre faute ou négligence?

Il faut répondre que la négligence a été jusqu'à un certain point une négligence commune, et que d'ailleurs la loi l'a ainsi voulu. L'acte des timbres a voulu que la cour elle-même prît connaissance du défaut; la loi déclare le billet non timbré nul et non avenu par soi.

Le législateur savait en édictant cette loi qu'il libérait le faiseur pour un motif dont le faiseur devait se reconnaitre coupable, mais dans le but de protéger le fisc, il a cru qu'il fallait appliquer cette peine quelque sévère qu'elle fût. Il a alors remplacé la responsabilité qu'avait encourue le faiseur ou le tireur en signant le billet ou la lettre de change sans y apposer des timbres, par une autre responsabilité, consistant dans le paiement d'une amende. La loi reconnait de plus, spécialement, le droit au faiseur d'invoquer cette cause de nullité, puis qu'elle lui permet de discuter la bonne ou mauvaise foi du porteur devant le tribunal devant lequel l'action est portée.

Cet acte d'abrogation, suivant moi, est tellement positif quant à l'enlèvement de la faculté dont il est question, qu'il pourvoit à ce que, de la date de l'acte d'abolition du 30 juin 1882, tous les timbres restant entre les mains et n'ayant pas encore servi, pourront être remis au gouvernement, ce dernier devant les accepter en paiement de toute somme payable à Sa Majesté pour les besoins publics du Canada, ou les recevoir en échange de timbres-poste de même valeur nominale.

Si le législateur avait voulu permettre de timbrer les billets déjà émis avant l'abrogation et qui n'avaient jamais été timbrés ou ne l'avaient pas été suffisamment, comme la faculté en était réservée aux porteurs par les actes abrogés, il aurait pourvu aux moyens de se procurer ces timbres dans l'avenir pour les besoins susindiqués.

Et ce qui prouve encore que le législateur n'a pas voulu permettre de se servir légalement de timbres après l'acte d'abolition, c'est que, par l'acte d'abrogation, il a enlevé toute sanction pour le mauvais usage de ces timbres, tel que cette sanction pouvait exister dans et par les actes abrogés; car l'acte d'abrogation détruit la possibilité de recourir à aucune pénalité pour les cas d'infractions y mentionnés. Seules les pénalités encourues lors de l'acte d'abolition sont réservées.

Deux jugements ont été rendus depuis cette loi d'abolition des timbres, sur et à propos de la question soulevée, l'un par M. le juge Taschereau, à Montréal, dans le mois courant, et l'autre par une des cours d'Ontario. Ce dernier jugement est rapporté dans le 5e vol. du L. N. p. 425. M. le juge Taschereau a maintenu le droit du porteur d'apposer doubles timbres, nonobstant l'abrogation de l'acte, et la cour d'Ontario a jugé la question dans un sens opposé.

Je suis d'avis que cette dernière décision doit être supportée. Et en conséquence, je déboute l'action, mais sans frais, attendu que le défaut provient pour le moins autant du faiseur que du porteur, et j'ajouterai même principalement du faiseur; car c'était lui qui était chargé plus spécialement par la loi des timbres, de les y apposer.

Léon Lorrain for the plaintiffs.
J. P. Carreau for the defendant.

GENERAL NOTES.

We were unable, before going to press, to obtain the correct title of the case called *Doe* v. *Roe*, in our last issue (p. 165). The proper title is *Revérend Messire Gandin* v. *Joseph Ethier*. Judgment was rendered by Mr. Justice Chagnon, on the 30th April last.

The following statement is circulated by the daily journals:—A summary of Mr. Judah P. Benjamin's fee-book, made up year by year since 1867, shows that he has in sixteen years received fees amounting to $696,044.78. In 1867 they amounted to a trifle more than $2,025; in 1882, to more than $63,900; and in 1880 his most profitable year, to $79,856.20. One of his most important cases was the Irish Fisheries suit, which paid him about $50,000. As to personal enjoyment, he says he experienced little of it in his profession. His sole object was to make money: and to that end almost every other personal consideration was sacrificed. He is now afflicted with an incurable heart disease, and realizes that it may prove suddenly fatal at any moment.