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HODGE v. *THE QUEEN.*

The people of Canada have exhibited great reserve in dealing with the B. N. A. Act, 1867. The tendency has been to avoid raising constitutional questions in our own courts, and during the sixteen years since the passing of that Act, in only fifteen cases have we sought the arbitrament of the Privy Council as to the meaning of the rules of our written constitution. This reserve is not the effect of indifference, but rather of a desire not to provoke hasty decrees, which, being rendered in unimportant matters, may not receive the attention the principle dealt with deserves. It will readily be admitted that there has been no reason to complain that the Judicial Committee has not given the most careful attention to these questions. In fact, the most perfect confidence exists in this country that "they decide each case as it arises as best they can"; but with all due respect for their opinions, the decisions they come to on these matters are of an importance too vital to us to permit of our accepting them otherwise than subject to the crucial test of scientific and historical criticism. It has been said, no jurisprudence can alter the terms of *Magna Charta*, and, in a like spirit, we must maintain, that no jurisprudence can be recognized which plainly misinterprets the great contract on which the Union of British North America has been based.

Having stated when, and how far we venture to demur to accept each decision of the Judicial Committee as conclusive authority in all similar cases for the future, we shall proceed to discuss, without reserve, two points to which recent decisions have given prominence. The first is the general rule to which we have just referred and which appears to be supported by a *dictum* of Hagarty, C.J., expressed in the following words: "that in all these questions of *ultra vires* it is the wisest course not to widen the discussion by considerations not necessarily involved in the decision of the point in controversy." It is as difficult to accept such generalities as it is to contradict them. In order to deal with them it is necessary first to determine their precise meaning. It may safely be assumed that what is meant is, that in interpreting a Statute of the nature of the B. N. A. Act, the courts should specially refrain from generalizing its terms. We contend, with all due deference, that this is a fundamental error; the true principle being that the whole scope of the Act has to be constantly kept in view so as to co-ordain the powers of both governments. This results not only from the nature of the Act but also from its form. Plainly it is an outline, the details of which are to be filled in at the suggestion of practical necessities. That this should be the case is evident to those who remember the circumstances of confederation. The assent of the people of four provinces had to be obtained. Manifestly it would have been impossible to get them to understand, and not less difficult to get them to adopt, a multitude of details. It was comparatively easy to indicate in general terms the powers of each government, and this is what was done. No one ever seriously contended that even the catalogues of Sections 91 and 92 were perfectly conclusive. Therefore there must exist a doctrine resulting from but undeveloped in the words of the Act. In practice, it may be added, the Privy Council has frequently laid down principles of the most abstract kind. It is difficult to conceive how, with any hope of avoiding even by hair-breadth escapes, contradictions, in the last degree unsatisfactory and disquieting to litigants, the courts are to proceed without adopting broad principles.

We next come to what we contend is a serious error of detail. In the case of *Hodge & The Queen*, their Lordships say: "It was contended that the Provincial Legislature had no power to impose imprisonment or hard labour for breach of newly created rules or by-laws, and could confer no authority to do so. The argument was principally directed against hard labour."

It is admitted that the question was not properly raised. Nevertheless, they decided it formally. They say, "under these very

general terms, 'the imposition of punishment by imprisonment for enforcing any law,' it seems to their lordships that there is imported an authority to add to the confinement or restraint in prison that which is generally incident to it—'hard labour'; in other words, that 'imprisonment' there means restraint by confinement in a prison, with or without its usual accompaniment, 'hard labour.'"

It will scarcely be questioned by any jurist that the power conferred by the Imperial Act, on a local legislature, to enact laws, decreeing a particular kind of punishment, cannot be extended more than an Act directly decreeing a similar punishment. It is elementary to say that the power to punish is always interpreted in the strictest manner. Their Lordships try to escape from this rule by saying that "the imposition of punishment by imprisonment for enforcing any law" are "very general terms," and that "hard labour" is generally incident to it; *i.e.*, to imprisonment. It is not unimportant to observe that the terms of the Act are—"by fine, penalty, or imprisonment." There is a double answer to this—first, these terms are not "very general." They are very particular terms; and they have a technical meaning. They constitute the common law punishment for every misdemeanour, to which no other punishment is attached. To say that "hard labour" is an incident of imprisonment, is a novelty in English law. The learned judges might as well include solitary confinement and whipping as incidents of imprisonment, because they sometimes go together.

The following authorities put this beyond all question:

The ordinary punishment, at common law, for misdemeanour, is fine or imprisonment, or both, and in some aggravated cases, by infamous corporal pain. *The Earl of Northampton's case*, 12 Co. 134; 2 East, 838; 1 Deacon, vo. Hard Labour; 2 Deacon, vo. Punishment. To this may be added Mr. Justice Stephen's Art. 22, in "A Digest of the Criminal Law," which, although not conclusive as to what he believes the law actually is, nevertheless seems to lay down a principle which can hardly be questioned. Russell treats hard labour, as a separate form of punishment similar to solitary confinement or whipping; 1 Russell, 78, 5th Ed. Hard labour is not incident to imprisonment, and it can only be inflicted when specially authorized by the special act. Greenwood & Martin's Magistrate and Police Guide, p. 52, note Y.

The only ground that remains, is the use of the word "penalty." It may be said that every punishment is a penalty. If that be the interpretation, it is idle to talk of an incident to imprisonment, and the local legislatures can add "death" as the punishment for the breach of their laws. The absurdity of such a pretention would be the best answer if it were put forward, which, probably, it will never be. To adopt such a rule would be to defeat the provision that the criminal law was reserved to the Dominion Parliament. The meaning of penalty in Section 92, S. Sect. 15, is probably that pointed out by Mr. Justice Stephen in his "Criminal Law of England," p. 5.

We think, therefore, that we have shown not only that the power to decree "hard labor" has not been given to the local legislatures, but that it has been purposely withheld, in order that no infamous punishment should be awarded, by a local legislature, for the infraction of a local act. R.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, January 30, 1884.

Before TORRANCE, J.

THE BELMONT MANUFACTURING CO. v. ARLESS.

Contract—Subscription for shares—Company to be incorporated.

The defendant subscribed for one share in the capital of a company about to be incorporated. The name of the proposed company was changed in the Act of incorporation from the "Lawlor" Manufacturing Company to the "Belmont" Manufacturing Company, and the list of shareholders filed in the office of the Provincial Secretary did not contain the name of the defendant. Held, that the change of name, and the omission to insert the defendant's name in the list of shareholders were immaterial, and that the subscription was binding.

The demand was for $100, subscription by defendant for one share in the capital of the Lawlor Manufacturing Company. The subscription was denied. The evidence of John B. Lawlor was that the defendant signed in his presence one share in the stock of the company. The heading of the subscription book signed by defendant read as follows: "Subscriptions for the capital stock of the Lawlor "Manufacturing Company; capital, one "hundred thousand dollars ($100,000), Montreal, Canada. The undersigned hereby "agree to take, and they hereby do take and "subscribe to the number of shares in said "Company set opposite to their respective "signatures, or any portion thereof, as may "be allotted by the Board of Directors, the "whole subject to the conditions contained in "the Act incorporating said Company." This heading had reference to the company plaintiff under another name. The defendant subscribed about the 7th November, 1879. Notice of an application to the Lieutenant-Governor for Letters Patent under the Act was dated 31st December, 1879. The list of shareholders filed in the office of the Provincial Secretary did not contain the name of defendant.

PER CURIAM. The omission to insert his name does not appear to me of any consequence. He had rights as a shareholder which could not be affected by such omission. His argument against his liability would seem to be based upon the pretension that he had the right to refuse the share in the company after its incorporation. I have examined carefully the case of *The Union Navigation Co.* v. *Couillard*, 7 Rev. Légale, 215. The constitution of the company there as incorporated was changed from what was subscribed for by Couillard, and he was held not to be bound. As was remarked by one of the judges in the case of *Couillard*, the question is purely one of contract. I find here that the defendant bound himself for one share in the company, and he should be held to his bargain.

Judgment for plaintiff.

Macmaster, Hutchinson & Weir, for plaintiff.
S. Lebourveau, for defendant.

COUR SUPERIEURE.

MONTRÉAL, 24 Novembre 1883.

Coram TASCHEREAU, J.

DAME AMELIA J. ARMSTRONG et vir v. LA SOCIÉTÉ DE CONSTRUCTION METROPOLITAINE et al.

Nullité de vente pour le paiement de taxes municipales.

JUGÉ:—*Que la vente d'immeubles faite sous l'autorité du code municipal pour le paiement des taxes sera déclarée nulle,* 1. *Si au moment de la vente le propriétaire était en faillite et ses biens remis entre les mains d'un syndic;* 2. *Si au moment de la vente un copropriétaire avait pris des procédés en licitation pour arriver à la vente et au partage des dits immeubles.*

PER CURIAM:—"Considérant que les ventes et adjudications faites le 6 et 7 mars 1882 sur le nommé Benoit Bastien, par la défenderesse, la Corporation du Comté d'Hochelaga, à la défenderesse la Société de Construction Métropolitaine et aux défendeurs F. X. Moisan, T. J. J. Loranger et Pierre Robert respectivement, des immeubles plus bas énumérés et décrits, sont nulles, illégales et de nul effet pour, entr'autres raisons invoquées par la demande, les suivantes, savoir:

1o. Parce que les dites ventes et adjudications ont été faites sur le dit Benoit Bastien, lequel était indiqué comme le seul propriétaire apparent des dits immeubles dans le rôle d'évaluation de la municipalité locale au profit de laquelle ces ventes et adjudications ont eu lieu; que les biens du dit Benoit Bastien, y compris les dits immeubles, étaient alors en la possession et sous la garde et le contrôle du défendeur Louis Dupuy, syndic à la faillite du dit Benoit Bastien, et que la dite Corporation du Comté d'Hochelaga ne pouvait pas valablement annoncer en vente et vendre, sous la prétendue autorité du Code Municipal, sur le dit Benoit Bastien des immeubles appartenant à sa faillite et dont le dit failli n'avait plus la possession ni la libre disposition depuis le commencement de sa faillite, savoir depuis le 28 février 1878;

2o. Parce qu'en outre les dits immeubles étaient, lors des dites ventes et adjudications, sujets à la licitation ordonnée par un jugement de cette Cour dans la cause portant le

No. 608, dans laquelle la présente demanderesse avait porté action contre le dit Benoit Bastien et autres co-propriétaires, et dans laquelle le dit Louis Dupuy était reprenant l'instance comme syndic à la faillite du dit Benoit Bastien, et parce que les dits immeubles ne pouvaient être enlevés au contrôle de l'autorité judiciaire pour être vendus pendant l'instance, sur un des co-propriétaires, savoir, sur le dit Benoit Bastien, par une corporation municipale, agissant ou prétendant agir en vertu des dispositions du Code Municipal ;

" Considérant que ces ventes et adjudications sont ainsi frappées de nullité radicale et absolue, et que la demanderesse, comme propriétaire d'une partie indivise des dits immeubles, avait et a intérêt de faire prononcer cette nullité ;

" Considérant que la défenderesse, La Société de Construction Métropolitaine et les défendeurs Moisan et Loranger ont déclaré s'en rapporter à justice, que les défendeurs Louis Dupuy, es-qualité, et Pierre Robert n'ont pas comparu, et que la demanderesse a déclaré se désister de sa poursuite quant au défendeur Joseph U. Emard ;

" Considérant que la défenderesse La Corporation du Comté d'Hochelaga, bien que suffisamment informée par l'action des moyens de nullité invoqués par la demanderesse, a jugé à propos de contester la demande, et s'est ainsi rendue passible des dépens encourus :

" Rejette les défenses de la dite corporation du comté d'Hochelaga ; déclare irrégulières, illégales, nulles et de nul effet, les ventes et adjudications faites le 6 et le 7 mars 1882 par la dite corporation du comté d'Hochelaga, à la défenderesse La Société de Construction Métropolitaine, et aux défendeurs Moisan, Loranger et Robert respectivement des immeubles suivants : (suit la description des immeubles) ; remet les parties en l'état qu'elles étaient avant les dites ventes et adjudications, pour la demanderesse, le dit Louis Dupuy, es-qualité, et le dit Benoit Bastien, exercer ultérieurement tel recours que de droit et contre qui de droit relativement à la propriété, à la possession et aux fruits et revenus des dits immeubles ; rejette le surplus des conclusions de la demande, et condamne la dite corporation du Comté d'Hochelaga à tous les dépens, y compris les frais de pièces.

Lareau & Lebeuf, pour la demanderesse.

C. A. Vilbon, pour la défenderesse.

SUPERIOR COURT.

SHERBROOKE, January 14, 1884.

Before BROOKS, J.

WILDER v. SUNDBERG.

Servitude—Enclavé—Right of passage—Public Road—Prescription.

1. *The right of passage in favor of an enclavé is based upon necessity not convenience, and ceases de plano with the necessity where no indemnity has been paid.*
2. *If under our law the right of passage for an enclavé may be perfected by prescription, the property must be enclosed during the whole time necessary to acquire prescription, and if it ceases to be so enclosed, prescription ceases to run.*
3. *The passage in dispute having been habitually kept closed at its ends by gates and bars, and not divided off from the remainingland, nor fenced on either side, and travelled only by the mere tolerance of the owner, has not become a public municipal road under the provisions of* 18 *Vict. cap.* 100, *sect.* 41, *sub-sect.* 9.
4. *The passage in dispute has not become a public municipal road by means of the informal procès-verbal produced, which is of another road not opened and not in force.*

BROOKS, J. This is an action *négatoire* to close a road or passage leading to the highway from defendant's land across that of the plaintiff. The plaintiff has been for two years the owner of the north half of lot No. 5, R. 3, Eaton, and the defendant owns the south half of lot 6 in same range, his property being adjoining that of the plaintiff. The plaintiff alleges that defendant claims a right of servitude or passage across his said land ; that no necessity exists for such passage ; that defendant's land is not *enclavé*, there being two public roads adjoining it, one leading to Sawyerville, the other to Eaton Corner ; and he asks that his land be declared free from such servitude.

The defence to this action rests upon three grounds :—

1st. That defendant's land is and always has been *enclavé* and that plaintiff's land has been subject to servitude in favor of defendants for over 40 years, and the enjoyment of

said passage for over 30 years has perfected the right of defendant to passage.

2. That for more than 10 years, to wit, for more than 30 years, this passage has been open to and used by the public, and has become a public municipal road under the provisions of the 18th Vict., cap. 100, sect. 41, S. S. 9.

3. That this road was by *procès-verbal* made a highway in 1856.

As to the first point, defendant's land is not *enclavé* now and has not been for years, just how long does not appear exactly. It has a highway to the west and south. There is variance in the time witnesses say that west road has been opened and travelled; but the witnesses whom I think best able to judge, state that the west road has been travelled at least 40 years, and a road called north road about 20 to 23 years, so that at any rate since 1853, defendant has not been *enclavé*, as witnesses say that he has good and easy means of access over his own lands to this west road, and now has equally good road to Sawyerville, by the south road. But defendant says that if the necessity has ceased, it existed for 30 years, and prescriptive right has been thereby acquired.

It would appear that 25 or 26 years ago, one Highgate Jordan was on defendant's land, but it does not appear when he went on or when the south half lot 6 R. 3 was first occupied. One witness, Henry Flanders, says he travelled the disputed road in 1838 and saw it travelled in 1832, but I think 1838 is about the time that it was first proved to have been travelled. Robert Wilder, who lives on an adjoining lot, states that this disputed passage has not been travelled over 45 years. Mr. Wm. Sawyer says that he travelled it 45 or 46 years ago, which would be 1839, and from the evidence generally I think it safe to say that it was first travelled in 1838. Flanders on cross-examination shows that he was not in a position in 1832 to know that it was being travelled as a road. It is proved by every one that it was always, except in winter months, closed at its extremities with gates and bars. Nothing was ever paid for right of passage, and no pretension of the kind is raised in defence. Now, if the defendant ceased to have his land *enclavé* in 1853, which is the nearest date I can fix, he had not acquired any prescriptive right of passage. There is no proof whatever that this road was anything but a *chemin de tolérance*. Our own Code, Art. 540, says that right of passage by *enclavé* can be claimed *en payant*. There is no proof of any payment having been made by or to anybody. This was a passage which existed, *closed however at both ends*. But has the defendant shown sufficient to do away with the old maxim "*nulle servitude sans titre*"? It is said he has legal title by use 30 years while *enclavé*. That is not proved, while the contrary appears, and consequently, the necessity having ceased, and the defendant having failed to obtain any judicial recognition of his right, no prescriptive rights have been acquired. C. C. Art. 540-544, De Lorimier Vol. 4, p. 671, La Cour d'appel à Lyon; do. p. 694; Toullier, Vol. 3, sects. 554, 5, 6, 7; Marcadé, Vol. 2, pp. 629-31; Rogron, Vol. 1, p. 562; Sirey, p. 291-2-3, sect. 31; Aubry & Rau, Vol. 3, p. 31.

Marcadé, Vol. 2, p. 631, says: "La servi-
" tude dont il s'agit ici établit que vu le dé-
" faut de communication avec la voie publi-
" que, il s'ensuit que si cette communication
" venait à exister ensuite, soit parce qu'on
" établirait une route contre le terrain primi-
" tivement enclavé, soit parce que le propriéé-
" taire de ce terrain aurait acquis l'un des
" fonds qui le séparaient d'un chemin auquel
" il touche maintenant, la servitude s'éva-
" nouirait; sauf le droit pour celui qui aurait
" payé une indemnité d'en réclamer une par-
" tie, laquelle serait plus ou moins forte en
" raison du temps pendant lequel la servitude
" aurait existé."

Toullier, Vol. 3, Sect. 554, says: "La Cour
" d'Appel de Lyon proposait d'ajouter que, si
" le passage accordé au fonds enclavé cesse
" d'être nécessaire par sa réunion à un fonds
" aboutissant à un chemin, il sera supprimé,
" et que, s'il a été payé une indemnité, le
" prix sera rendu. Cette observation, con-
" forme à l'équité, devrait être étendue au
" cas où il a été ouvert un chemin nouveau
" auprès du fonds autrefois enclavé. La
" cause cessant, l'effet doit cesser. Le pro-
" priétaire ne pourrait invoquer la prescrip-
" tion, car ce n'est point une servitude de

" commodité dont il a usé, mais une servi-
" tude de nécessité."

Sect. 556. " Le droit de passage accordé
" aux fonds enclavés qui n'ont pas d'issue
" sur la voix publique est fondé sur la néces-
" sité."

Sect. 547. " Le Code ne donne le droit d'exi-
" ger un passage qu'à celui qui n'a aucune
" issue sur la voie publique. L'incommodité
" du passage ordinaire fût-elle extrême, ne
" suffirait pas pour forcer le voisin d'en céder
" un autre."

Aubry & Rau, Vol. 3, p. 31. La loi n'accor-
" dant au propriétaire d'un fonds enclavé le
" droit de passer sur les fonds voisins, qu'à
" raison de la nécessité résultant de l'en-
" clave, ce droit ne peut plus être réclamé,
" lorsque l'enclave vient à cesser, soit par l'é-
" tablissement d'un chemin, soit par la réu-
" nion du fonds originairement enclavé à un
" héritage communiquant à la voie publique.
" Il en est ainsi lors même que le passage a
" été exercé pendant plus de trente ans ou
" qu'il l'a été après paiement d'une indemni-
" té sauf dans ce dernier cas, la restitution de
" l'indemnité dont le paiement se trouverait
" justifié."

Sirey et Gilbert, Vol. I, p. 293, Sect. 30-31 :
" Et même la servitude s'éteint dès l'instant
" qu'au moyen d'acquisitions faites par le
" propriétaire enclavé, l'état d'enclave a cessé,
" encore même que le nouveau chemin à par-
" courir soit plus long que l'ancien."

Sect. 33. " La restitution de l'indemnité ne
" doit être ordonnée qu'autant qu'il y a
" preuve positive qu'elle a été payée."

Now, if defendant's property was *enclavé* in 1838, it did not continue so for 30 years, because long before the expiry of 30 years, it ceased to be *enclavé*. The west road, so called, led to his property and was publicly travelled 40 years ago. By this road he and his *auteurs* had direct communication with Eaton Corner. And by the north road which was opened and travelled between 20 and 25 years ago, he had communication with the stage road, so called, direct to Sawyerville, and now a new road, called south road leading to Sawyerville, has been opened on the other side of defendant's property.

The passage in dispute, therefore, is used from convenience rather than necessity. Has this become a public municipal road by means of 10 years' use under 18th Vict. cap. 100, sect. 41 s. s. 9,—which declares " that any " road left open to and used as such by the " public during a period of 10 years and up-" wards, shall be held to have been legally " declared a public highway, and to be a road " within the meaning of this Act?"

This road has never been left open to the public. It has always, except during the winter months while snow was on the ground, been closed with gates and bars, and it would seem purposely so. Jerome Sawyer, who lived on defendant's land, says that Hazleton who then owned plaintiff's land, always claimed that this was not a road, and persisted in keeping up gates and bars, that is, keeping it closed so that no right to a road should be acquired by prescription. Our Municipal Code, Sect. 749, declares what since its passage has been the law, and I think it may be reasonably interpreted as having been the law before: " Land or passages " used as roads by the mere permission of " the owner or occupant, are municipal roads " if they are fenced on either side or other-" wise divided off from the remaining land, " and are not habitually kept closed at their " extremities."

Now this road has been habitually kept closed, and as it appears purposely so. It has never been divided off from the remaining land, nor fenced on either side. Most of the way it is a mere track through the field without ditches. There is absolutely nothing proved showing or tending to show any intention on the part of the plaintiff or his *auteurs* to dedicate or abandon this road to the public use. The public, by the mere *tolerance* of the plaintiff and his *auteurs*, were permitted to use this road in order to reach the defendant's land, but to do so they were obliged to open and close the gates and bars, and until about 10 years ago, this road was used for no other purpose than to go to the defendant's. Vide Q. L. Reports, Vol. 9, pp. 98, 9, *Roy* v. *Beaulieu*. It is against public policy that such passages should become public roads at the charge and maintenance of the municipality.

Has this road become a highway by reason of the *procès verbal* produced?

The *procès verbal* is wholly informal, but what does it show? That another road or passage than the one in dispute *now* was laid out by the municipality, but was never opened. James Addie says that road does not touch the disputed road. No road work was ever done, no tax expended. It has not been kept fenced, nor separated from adjoining property. Highgate Jordan did not do what he was called upon to do by the procès verbal, nor did the owner of south half of lot 5 in R. 3. No expropriation was ever made.

This is not a highway; the defendant has not acquired the right to travel now that necessity has ceased, and consequently plaintiff's action is maintained with costs.

Camirand, Hurd & Fraser, for plaintiff.

Ives, Brown & French, for defendant.

COUR SUPERIEURE.

MONTRÉAL, 1er mai 1883.

Coram MATHIEU, J.

DAME M. MARCILE v. DAME R. MATHIEU.

Responsabilité du propriétaire—Mis en demeure —Force majeure.

1. JUGÉ:—*Que le bailleur n'est tenu des dommages résultant de son défaut d'entretenir les lieux en bon état de réparations, que lorsqu'il a été dûment mis en demeure, ce qui ne peut être fait que par écrit lorsque le bail est authentique.*
2. *Qu'il n'est pas non plus responsable des dommages qui ne résultent pas de sa négligence, mais sont la conséquence d'un incendie, surtout lorsqu'il a fait diligence pour réparer les lieux.*

Les faits de la cause apparaissent suffisamment dans le jugement qui suit:

"La Cour, etc....

"Attendu que la dite demanderesse allègue dans sa déclaration que par bail passé, à Montréal, le 25 avril 1882, devant Mtre. V. Lamarche, Notaire, la défenderesse loua à la demanderesse pour l'espace d'une année à compter du premier mai alors prochain, en considération de la somme de $168.00 payable par paiements égaux et mensuels de $14.00 chaque, le haut d'une maison décrit comme suit au dit bail: "Le logement de haut au-dessus du No. 36 de la rue Notre Dame de cette ville;" que la demanderesse prit possession de ce logement le premier de mai 1882 et qu'elle l'a occupé et l'occupe encore; que la demanderesse est veuve et qu'elle avait loué ce logement dans le but de tenir une maison de pension, et de sous-louer des chambres; que la défenderesse était tenue par le bail et par la loi de lui procurer une possession et jouissance paisible de ce logement; que depuis trois mois, par la faute et la négligence et le refus de la défenderesse de chauffer ou de faire chauffer le bas ou les étages inférieurs de la maison, l'eau est complètement gelée dans les conduits et ne peut plus monter jusqu'au logement de la demanderesse; que cette dernière et sa famille sont obligés d'aller chez les voisins pour aller chercher de l'eau pour les choses les plus nécessaires, et que le cabinet d'aisance ne pouvant plus fonctionner, il en est résulté un amoncellement d'immondices, qui émet une odeur infecte et rend le logement dangereux à habiter et inhabitable; que la demanderesse a tout fait pour ne pas être obligée de recourir à la justice, qu'elle s'est plaint plusieurs fois et vainement aux officiers du bureau de santé et à la police, et qu'elle a sommé la défenderesse et ses agents de remédier à cet état de choses intolérable; que depuis trois mois elle a souffert par suite du manque d'eau, des dommages considérables tant sous le rapport de sa santé et celle de sa famille, que sous le rapport pécuniaire; que plusieurs de ses pensionnaires et des personnes qui avaient loué d'elle des chambres sont partis, et que d'autres ont refusé de s'y loger, après avoir constaté l'état dans lequel se trouvait le dit logement; que le refus et la négligence de la défenderesse de chauffer le bas de la dite maison ont rendu plus difficile le chauffage du logement de la demanderesse; que cette dernière et quelques-uns des membres de sa famille sont malades et que ces maladies proviennent du mauvais état de ce logement par le manque d'eau; que les dommages causés à la demanderesse à raison des faits plus haut relatés sont de deux cents piastres, qu'elle réclame;

"Attendu que la dite défenderesse a plaidé à cette action qu'elle a livré et entretenu en bon état le logement et qu'elle en a procuré à la demanderesse une jouissance paisible jus-

qu'à ce jour ; que le bas de la maison en question a toujours été convenablement chauffé, et que s'il est arrivé que les tuyaux à l'eau aient gelé, cela est dû à l'extrême rigueur de la saison et est une force majeure, dont la défenderesse n'est pas responsable ; que dans tous les cas, la demanderesse ne s'est jamais plaint à la défenderesse et ne lui a pas dénoncé les faits dont elle se plaint dans son action. Mais, qu'au contraire, la défenderesse n'a appris que les tuyaux étaient gelés que le 3 de mars 1883 par la police sanitaire qui en a averti un de ses fils, quoique la demanderesse eut eu plusieurs occasions d'avertir la défenderesse de ces faits : que dans l'après-midi du dit 3 mars dernier, la défenderesse a envoyé des ouvriers pour réparer les tuyaux qui ont été remis en ordre dans le plus court délai possible ; que par conséquent la défenderesse n'a aucun tort, ayant fait toute diligence pour réparer ce qu'avait causé une force majeure, et ce aussitôt qu'il lui a été possible de le faire ;

" Considérant que par le bail consenti par la défenderesse à la demanderesse le dit 25 avril 1882 devant le dit Lamarche, Notaire, et par les dispositions de l'article 1641 du Code Civil, la défenderesse était tenue de faire jouir paisiblement la demanderesse du logement en question ;

" Considérant que par les dispositions du dit article 1641 du Code Civil, le locataire a droit d'action pour le recouvrement de dommages-intérêts à raison d'infractions aux obligations résultant du bail ;

" Considérant cependant que le bailleur n'est tenu aux dommages-intérêts résultant de son défaut d'entretenir les lieux en bon état que lorsqu'il est mis en demeure, conformément aux dispositions de l'article 1070 du Code Civil, qui décrète que les dommages-intérêts ne sont dûs pour l'inexécution d'une obligation que lorsque le débiteur est mis en demeure, conformément à quelques-unes des dispositions contenues dans les articles de la section 2 du chapitre 6e du titre 3e du livre 3e du dit Code Civil ;

" Considérant que par les dispositions de l'article 1067 du dit Code Civil contenues dans la dite section 2 du dit chapitre 6e, la défenderesse devait être mise en demeure par une demande par écrit, vu que le bail est un bail notarié ;

" Considérant que le mauvais état des lieux n'a pas été causé par la faute de la défenderesse, mais est le résultat d'un incendie, et que la dite défenderesse n'a jamais été mise en demeure régulièrement, conformément aux dispositions de la loi, et que par cette raison, elle ne peut être tenue responsable des dommages-intérêts réclamés par la demanderesse, avant que la défenderesse ait été mise en demeure comme susdit ;

" Considérant de plus que la défenderesse parait avoir fait réparer les tuyaux avec une diligence convenable ;

" Considérant que l'action de la demanderesse n'est pas pour contraindre la défenderesse à faire les réparations nécessaires, mais est une action en dommages ;

" Considérant que l'action de la dite demanderesse est mal fondée et que les défenses de la défenderesse sont bien fondées ;

" A maintenu et maintient les dites défenses et a renvoyé et renvoie l'action de la dite demanderesse, avec dépens distraits à Messieurs Barnard, Beauchamp et Doucet, Avocats de la défenderesse.

Longpré & David pour la demanderesse.

Barnard & Beauchamp pour la défenderesse.

(J.J.B.)

GENERAL NOTES.

M. Mouselet tells a story of the late Brillat-Savarin, who was well known to be fond of good eating, that his colleagues in the *Cour de Cassation* were considerably upset sometimes, by the smell of game which he carried in his pockets, that it might get "high !"

Among journals devoted to special vocations is one bearing the cheerful title of the *Shroud*, which has been recently amalgamated with the *American Undertaker* and *Burial Case Manufacturer*. In a frolicsome way it "wishes that all its readers may have one of those merry and jolly times which are associated with the coming New Year," and adds, "the *Shroud* wishes the manufacturers a phenomenally prosperous year, and the undertakers happiness and prosperity. May the coming year be all that the trade could desire."

Some time ago, Mr. Justice Lawson committed Mr. Dwyer Gray, of the Dublin *United Irishman*, to prison for contempt of Court. When Gray got out again, a few weeks later, he found Lawson's country villa at Bray to let for the summer. "Just what I want for the season," he exclaimed, and rented it forthwith. That evening Lawson's agent said to the Justice : "I rented your house to-day, and to whom do you suppose?" "I'm sure I don't know." "Dwyer Gray." "Well, that's better quarters than I gave him before."