The Legal News.

Vol. VII. JANUARY 26, 1884. No. 4.

HODGE v. *THE QUEEN.*

There has been almost an outcry as to the decision in the case of *Hodge* v. *The Queen.* Generally it seems to have been taken as over-ruling the doctrine laid down in *Russell* v. *The Queen* (5 L. N. 234). This is the more remarkable, as the Judicial Committee took special pains to guard against any misapprehension on this point, and indicated very clearly the distinction between the two decisions. It is hardly necessary to add anything to what their Lordships have said on the matter. In *Russell's* case it was decided that an Act whose object was to "promote temperance in the Dominion," and to make "uniform legislation in all the pro-"vinces respecting the traffic in intoxicating "liquors," and which did not interfere with any of the powers exclusively assigned to the provinces, was not *ultra vires* of the Dominion Parliament, and that the "Canada Temperance Act, 1878," did not interfere with the exclusive rights of Provincial Legislatures to make laws in relation to:

"9. Shop, saloon, tavern, auctioneer, or other licenses in order to the raising of a revenue for provincial, local, or municipal purposes.

"13. Property and civil rights.

"16. Generally, all matters of a merely local or private nature in the province."

This covers all the serious objections suggested by appellant, for raising the question of the absence of power in a legislature to delegate its authority only indicates a temporary paralysis of the reasoning faculties. The decision therefore amounts to this: (1) that a local legislature has still a right to raise money by tavern licenses; (2) that a law regulating taverns to the extent of preventing the sale of alcoholic drinks, is not an interference with property and civil rights within the meaning of sub-section 13, more than would be a law regulating the sale of dynamite. Their Lordships add a reason, which will at once be accepted as an incontrovertible canon of interpretation when dealing with the dispositions of the B. N. A. Act. They say: "The true nature and character of the legislation in the particular instance under discussion must always be determined in order to ascertain the class of subjects to which it really belongs."

On the third ground their Lordships might have contented themselves with saying, under the principle just laid down as to the true nature and character of the legislation, that the Temperance Act did not regulate a matter of a merely local or private nature in the Province. Rightly they hold that the objects and scope of the legislation are still general, viz., to promote temperance by means of a uniform law throughout the Dominion.

A reason drawn from Section 91, might have been urged in support of the Dominion jurisdiction, but their Lordships thought this discussion unnecessary. It was enough to say, the local powers are not interfered with.

Having so completely answered the objections of the respondent, it is unfortunate that the Privy Council should have used expressions which seem, to some extent, to favour the doctrine that the extension of a statute to the whole of Canada, and apart from any other consideration, of itself removes it from the category of matters of a merely local or private nature in the provinces. According to their Lordships' own theory, it is the object and nature of the legislation that has to be looked at, and therefore the Dominion Parliament can no more extend the limits of its jurisdiction by the generality of the application of its law, than the Provincial legislatures can extend their jurisdiction by localising the application of theirs. The exceptional power given to the Parliament of Canada to declare "local works or undertakings" to be for the general advantage of Canada or for the advantage of two or more provinces, seems to sustain this view. Sect. 92, S. S. 10, *c.*

The *Hodge* case simply declares that "The Liquor License Act of 1877, Cap. 181, Revised Statutes of Ontario," is within the powers of the local legislature of Ontario, and that in

its operation it does not conflict with "the Temperance Act of 1878."

It is only necessary to quote a few words of the opinion to establish this. Their Lordships declare that the true meaning of the Act is to grant power to Commissioners in each municipality to "make regulations in the nature of police or municipal regulations of a merely local character for the good government of taverns, &c., licensed for the sale of liquors by retail, and such as are calculated to preserve, in the municipality, peace and public decency, and repress drunkenness and disorderly and riotous conduct. As such they cannot be said to interfere with the general regulation of trade and commerce which belongs to the Dominion Parliament, and do not conflict with the provisions of the Canada Temperance Act, which does not appear to have as yet been locally adopted."

Two observations at once suggest themselves—first, the question of "municipal institutions in the province" was not discussed in the case of *Russell*, and consequently the decision in *Hodge's* case is not formally in contradiction with that of *Russell*; and 2nd, that the principles on which they rest lead to no confusion, for the general right of the Dominion to make laws relating to public order and safety, does not restrain the power of the local legislatures to regulate these matters which have always been made the subject of municipal control, although their object may be similar. We have in practice an illustration of this constantly before our eyes. The police force in towns subsists on a local law, as part of municipal institutions, and alongside of it we have Dominion Police Forces organized under Dominion laws.

There seems, then, to be no need of alarm that the Privy Council has unconsciously given contradictory decisions in these two cases, nor was there any reason to presume from the *Russell* case, that a different decision than that given would be arrived at in the *Hodge* case. In support of this, it may be said that the Court of Queen's Bench sitting at Quebec, suspended its decision for a considerable time, in the case of the *Corporation* of *Three Rivers & Sulte*, in the expectation that the decision in *Russell* v. *The Queen*, might perhaps serve as some sort of guide on the point. After the decision in *Russell's* case was known, the Court held precisely in principle what the Privy Council has since held in *Hodge's* case. (See 5 Legal News, p. 330.)

When the operation of laws clashes, other questions will arise, and then we shall have to go back to the doctrine laid down in *Belisle* v. *L'Union St. Jacques*, to the effect that, legislation may be circumscribed by the exercise of a higher legislative authority. We take it this is the idea conveyed by Lord Selborne's argument in that case. (20 L. C. J. p. 20 and specially p. 47.)

Notwithstanding the reiteration of the recommendation that "in performing the difficult duty of determining such questions, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon the interpretation of the statute than is necessary for the decision of the particular question in hand," their Lordships lay down a general principle of some value. They say: "that subjects which in one aspect and for one purpose fall within Sect. 92, may in another aspect, and for another purpose, fall within Sect. 91."

We regret their Lordships should have passed upon the point as to the power to impose hard labour, which they admit, "was not raised on the rule *nisi* for the *certiorari*, nor is it to be found amongst the reasons against the appeal to the Appellate Court in Ontario." In another number we purpose to examine this *obiter dictum*.

R.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, December 31, 1883.

Before RAINVILLE, J.

LA CITÉ DE MONTRÉAL v. WYLIE et vir.

Taxes—Exemption—Educational Institution—41 Vic., c. 6, s. 26.

A school for the education of young ladies, kept by private persons, and not under public control, is not an "educational institution" within the exemption of 41 Vict. (Que.) cap. 6, s. 26.

PER CURIAM. La Corporation de Montréal réclame de la défenderesse une somme de $440.80, pour taxes imposées sur une propriété appartenant à la défenderesse, pour les années 1878, 1879 et 1880.

La défenderesse ne nie pas qu'elle soit propriétaire, mais elle allègue que sa propriété est exempte de taxes, en autant que pendant tout l'espace de temps pour lequel les taxes sont réclamées, sa propriété a été exclusivement employée aux fins d'éducation; que c'était en réalité une maison d'éducation (educational institution), et qu'elle n'a reçu aucune subvention de la demanderesse.

Les faits ne sont pas contestés, et il est admis par les parties que la propriété mentionnée en la déclaration sur laquelle les taxes sont réclamées, a été occupée et employée pendant tout le temps pour lequel les taxes sont réclamées comme maison de pension et d'école de jour pour les jeunes filles, et maintenue par la défenderesse qui y employait plusieurs institutrices pour l'enseignement, et qu'en moyenne quatre-vingt-cinq élèves fréquentaient cette institution annuellement; que cette institution n'a jamais reçu de subvention de la Corporation demanderesse; en un mot, que si la dite institution n'est pas une maison d'éducation (educational institution) sous l'acte 41 Vict., ch. 6. (Q.) jugement doit être rendu en faveur de la demanderesse, sinon l'action doit être renvoyée.

Il ne s'agit donc, en cette cause, que d'interpréter l'acte sur lequel est basée la prétention de la défenderesse.

Voici les termes de cette disposition:

" Toutes maisons d'éducation qui ne reçoi-
" vent aucune subvention de la Corporation
" ou Municipalité où elles sont situées ainsi
" que les terrains sur lesquels elles sont éri-
" gées et leurs dépendances, seront exemptes
" des cotisations municipales et scolaires, quel
" que soit l'acte ou charte en vertu duquel ces
" cotisations sont imposées, et ce, nonobstant
" toutes dispositions contraires."

Le texte, en langue anglaise, rend les expressions: " *Toutes maisons d'éducation*" par " *every educational institution.*"

Cette disposition est assez étrange: elle est donnée comme devant être ajoutée à la sect. 77, ch. 15 des S. R. B. C., lequel n'a trait qu'aux écoles. La § 2 de cette section 77 exemptait des taxes imposées en vertu de cet acte (c'est-à-dire des taxes scolaires) " tous les bâtiments " consacrés à l'éducation ou au culte religieux, " presbytères, et toutes institutions chari-" tables ou hôpitaux incorporés par acte du " parlement, et le terrain sur lequel ils sont " érigés." " *All buildings set apart for purposes* " *of education*, or of religious worship."

Il ne s'agit dans ce statut que de taxes scolaires: comment dans un amendement ajouté à cet acte, a-t-on introduit une disposition relative à l'exemption de taxes municipales?

Cependant là n'est pas la question: il s'agit seulement de déterminer si sous le nom de " *Maisons d'éducation*," " *Educational Institution*," on doit comprendre les maisons *d'éducation privée*, "*private schools.*"

La question ne laisse pas de présenter quelques difficultés: car on a greffé sur une loi qui n'avait trait qu'à l'exemption des taxes scolaires une disposition qui exempte des taxes municipales, et l'on s'est servi pour déterminer les propriétés et choses que l'on entendait exempter de taxes, d'expressions différentes de celles que le législateur avait employées dans la loi originaire. Dans cette première loi (S. R. B. C., ch. 15, s. 77) le législateur s'était servi des expressions: " tous les " bâtiments consacrés à l'éducation": " all " buildings set apart for purposes of educa-" tion," et dans la s. 26 du ch. 6 de 41 Vict., on emploie les mots: " Toutes maisons d'éducation": "every educational institution": a-t-on voulu par là étendre les dispositions du statut originaire? A-t-on voulu comprendre d'autres propriétés ou institutions que celles que comprenait ce statut? Puis on n'a aucune définition des expressions employées par le législateur.

Et, dit la défenderesse: voici une maison qui est exclusivement employée pour les fins de l'éducation: un grand nombre de maîtres y enseignent, et cent personnes y reçoivent l'instruction: est-ce que ce n'est pas là une maison d'éducation? *An educational institution?*

Et prenons pour exemple le collége de Sorel, qu'un M. Lyall, je crois, vient d'acquérir: ce collége peut contenir 200 élèves, et est, si je ne me trompe, exclusivement occupé par des élèves et des professeurs qui donnent une éducation complète: n'est-ce pas là une mai-

son d'éducation? *An educational institution?*

Et parce que ces institutions sont privées, appartiennent à un particulier, n'ont-elles pas autant de droits qu'une institution semblable qui serait sous le contrôle d'une corporation?

Sans doute, et ces motifs me sembleraient très-puissants en législation. Mais sont-ils bien fondés en loi? Là est la question.

Il est assez difficile de trouver des autorités et surtout des précédents sur le point: aux Etats-Unis, chaque Etat a sa législation particulière sur les exemptions de taxes et chaque législature a employé des termes différents.

La loi qui me paraît le plus ressembler à la nôtre, est celle de l'Etat de New-York: elle est dans les termes suivants:

"The following property shall be exempt "from taxation:

"4o. Every building erected for the use of "a college, incorporated academy, or *other* "*Seminary of learning, every school-house....*"

Sous l'opération de cette loi on a maintenu que:

"Exemptions from taxation of educational "property are held not to include *private* "*schools*, nor the property devoted to their "use."

Hilliard on Taxation, Ch. 3, § 31.

Les tribunaux ont aussi décidé en ce sens.

3 Sandford Rep. p. 409.—*Clegaray* v. *Jenkins.*

Le juge Paine en rendant jugement, s'exprime dans les termes suivants:

"It is urged on behalf of the plaintiff, that the premises are a seminary of learning, within the meaning of this statute. It is very questionable, however, to say the least, whether upon a just construction of it, boarding-schools of this description, are comprehended within its letter or spirit.

"This school was established by private enterprise, is under no legal or public control, and is no more of a public character than any boarding-house, or other private property used for the accommodation of the public. On the other hand the institutions among which seminaries of learning are classed in this statute, are not merely of a public character, and under the management and control of the public, but are incorporated and endowed by the State.

"The clause is: 'Every building erected for the use of a college, incorporated academy, or other seminary of learning.' The maxim *noscetur a sociis* appears to be applicable here, and to limit the exemption from taxation to such seminaries alone as are incorporated. The expression was, no doubt, intended, such incorporated institutions of this description, as might not be properly called colleges or academies.

"Neither does it appear to us that the school in question is any more within the spirit than the letter of the statute.

"We certainly do not mean to detract from the great responsibility and usefulness of this and similar schools: but taxation is designed to be an equal burden upon all: and if any inequality is allowed to exist, it is supposed to be in favor of the poor rather than of the rich. Boarding-schools, however, are not within the reach of the poor.

"Their children live in such accommodation as can be provided for them at home, and are taught at schools that are common to all, and which are expressly exempted from taxation. If boarding-schools, therefore, were exempted from taxation, it would be exclusively for the benefit of the rich."

3 Sandford Rep. p. 413 et seq.

Une décision dans le même sens a été rendue par la Cour d'Appel de l'Etat de New-York, en 1855.

3 N. Y. Rep. Kerman, p. 220.

So a grammar school kept by a person at his own risk and on his own account, is not "a college, academy or seminary" within the exemption of the (N. Y.) tax act of 1851.

Hilliard, on Taxation.—Ch. 3, § 31, p. 88.

But buildings erected, kept, and appropriated for the use of a literary and scientific institution, and in which a corps of teachers has been engaged in teaching pupils in all the branches of education usually taught at colleges, are exempt from taxation under the (Ind.) act of 1861, although the institution is conducted on private account and the earnings are applied to the personal benefit of the individual proprietor.

Hilliard loc. cit. Et il cite 24 Ind. R. 391. Mais il ne cite pas les termes de l'acte de 1861.

Les termes dont se sert notre statut: "Toutes maisons d'éducation"; "*Every educational institution,*" me semblent indiquer

que le législateur n'entendait inclure que les institutions publiques et non des institutions privées. Les mots indiquent quelque chose de permanent et qui ne doit pas prendre fin suivant le caprice ou la volonté du propriétaire.

La défenderesse est donc mal fondée, et la demanderesse doit avoir jugement.

The judgment is as follows .—

" La cour, etc....

" Attendu que la demanderesse réclame de la défenderesse la somme de $440.80, étant pour taxes municipales pour les années 1878, 1879 et 1880, les dites taxes étant imposées sur une propriété située dans le quartier St. Antoine et appartenant à la dite défenderesse, et pour intérêt sur les dites taxes à compter du 1er novembre de l'année où elles sont devenus dues respectivement jusqu'au 23 février 1881;

" Attendu que la dite défenderesse a plaidé que la propriété sur laquelle les dites taxes ont été imposées a été, durant le temps pour lequel les dites taxes sont réclamées, exclusivement occupée par la défenderesse comme maison d'éducation (educational institution) avec ses dépendances, pour l'éducation des filles, et que la dite maison d'éducation n'a reçu aucune subvention de la Corporation demanderesse, et qu'elle est en conséquence exempte des taxes municipales ou scolaires ;

" Attendu que les parties ont admis que la propriété sur laquelle les dites taxes sont réclamées a été occupée pendant tout le temps mentionné en la déclaration comme maison de pension privée et école privée de jour (day school) pour les filles; que la défenderesse employait pendant ce temps plusieurs maîtresses et qu'on y enseignait en moyenne à quatre-vingt-cinq jeunes filles par année ; que la dite institution n'a jamais reçu aucune subvention de la demanderesse ; et que la seule question est de savoir si la dite institution est une maison d'éducation aux termes de la section 26 de l'acte de Québec 41 Vict., chap. 6 ;

" Considérant que les expressions dont s'est servi le statut, impliquent l'idée que les maisons d'éducation (educational institution) sont des institutions d'un caractère permanent et fondées dans un intérêt public, et sous le contrôle de l'autorité, et non des institutions privées, et qu'en conséquence les lieux occupés par la défenderesse ne sont pas exempts de taxes ;

" Déboute la défenderesse de son plaidoyer, et la condamne à payer à la demanderesse la dite somme de $440.80, avec intérêt et les dépens."

R. Roy, Q.C., for the plaintiff.

Kerr & Carter for the defendant.

CIRCUIT COURT.

MONTREAL, December 29, 1883.

Before TORRANCE, J.

LAPOINTE v. THE CANADIAN PACIFIC RAILWAY COMPANY.

Contract — Mandate — Responsibility of mandator—C.C. 1730.

The plaintiff, a workman, was engaged by contractors for the construction of a railway. The railway company acted as bankers for the contractors, and paid the wages of the workmen, cost of transport to the place where they were engaged, &c. Held, that the company were the real principals, and they had given the plaintiff reasonable cause for believing that the contractors were their agents, and therefore the company were liable for a breach of the contract.

The demand was for damages for breach of a contract of hiring. Plaintiff said that about the 19th October, he was hired by the agents of defendant to work on their railway at the rate of $3 per day ; that he was to be employed at least six months; that in pursuance of the agreement, he went to Lake Nepigon, but the defendant refused to employ him ; that he was retained by defendant from 19th October to 9th November doing nothing and he claims 20 days at $3 per day, equal to $60 ; that he further claimed from them $6.50, disbursed by him for food ; that he had a further right to claim damages for violation of the contract made for six months—for trouble, anxiety, sufferings, loss of time and money, which he reduced to $30, in all $96.50.

The defendants denied the contract and breach ; they said they offered $1.75 and $2.00 and never refused work ; that they paid travelling expenses and board of a large number of persons who pretended to desire to work for them.

PER CURIAM. The evidence shows that the defendants or their contractors wanted large numbers of laborers. They were hired by divers sub-agents. Chief of these sub-agents was one Talbot, who took his orders from Mr. William Smellie, the chief agent of the Contractors—a foreign Corporation known as the North American Contracting Company. A gang of 430 men went with plaintiff on the 19th October, under charge of Augustin Lepage. Lepage told the men that the contractors hired, but the company, defendants, paid them. The defendants were the bankers, and paid for the railroad tickets and transport and board to Lake Superior. When the men arrived at their destination, the agent there of the contractors, John Ross, was taken by surprise, was disconcerted, and could not say that he would have work for them, and upon reflection said that he would employ 50 on the Monday morning, and probably have occupation for the entire number within 15 days. Plaintiff offered his services on Saturday the 27th, and it is impossible to say that they were accepted by Mr. Ross, though he did the best he could under the circumstances. The plaintiff then returned to Montreal and made the present reclamation. Did the agents bind their principals though they exceeded their powers and their instructions;—for the principals say that they did not promise more than $1.75 and $2.00 for earth excavation and rock excavation, and here the demand is for the wages of a blacksmith, C.C. 1730. The man hired as a blacksmith, and would have earned the wages of a blacksmith with the contractors if competent for his work, and there is no proof of incompetency. Plaintiff was justified in believing so, seeing the heavy expenditure made for the contractors, the payment of the men's board and their passage-money to the Lake.

Next, is there anything in the objection that the contract was with the foreign contractors, the North American Contracting Company? Unhesitatingly not. The general rule obtains that agents or factors, acting for merchants resident in a foreign country, are held personally liable on contracts made by them for their employers: Story—Agency, §268, and here the real principals were the defendants who supplied the money, and who employed the contractors. I therefore adjudge the defendants to be liable. The damages are estimated as follows: Plaintiff was away 20 days: 11 days' wages from time of arrival at Lake Nepigon, beginning on the 29th October till the 9th November, $33; 9 days which I allow at $2, or $18, from the 19th to the 28th October, inclusive; 6 days more are allowed after his return at $2 per day, or $12; and $9 allowed for his sufferings, making in all $72, but from this is deducted $10, board money, which should come out of his wages. Plaintiff will therefore have judgment for $62 and costs.

L. O. David for plaintiff.

H. Abbott and *C. A. Geoffrion* for defendant.

SUPERIOR COURT.

MONTREAL, January 19, 1884.

Before PAPINEAU, J.

PAUZÉ *es qual.* v. SÉNÉCAL.

Obligation—Acceptance—Insolvency.

A creditor received certain railway bonds as collateral security for notes of his debtor. In a suit to recover the bonds, brought by the curator to the debtor's vacant succession, the creditor pleaded that the debtor had agreed to transfer the bonds to one G. for a price named, and that G. had assigned his rights to the defendant. Held, (1) *that there being no evidence that the obligation was accepted by G. prior to the insolvency or death of the debtor (pledgor), it could not be urged as a defence to the action.* (2) *That in default to return the bonds the defendant was liable for the par value.*

The judgment is as follows:

"La Cour, etc.

"Considérant que le demandeur ès-qualité de curateur à la succession de feu John Henry Pangman, décédé le onze de novembre 1880, réclame du défendeur cinquante-quatre débentures de la Compagnie du Chemin de Fer des Laurentides, de $500 chaque, qui ont été déposées le 31 janvier 1880, entre les mains du dit défendeur pour sureté collatérale du paiement de deux billets consentis par le dit feu J. H. Pangman au défendeur, l'un de $1000 payable dans dix mois de la dite date, et l'autre de $1000 payable dans douze mois de la même date;

"Considérant que le demandeur a prouvé toutes les allégations de sa demande, et spécialement que le 6 avril 1882, avant la présente action, il a offert au défendeur le montant en capital des dits billets et les intérêts alors échus sur iceux, formant en tout la somme de $2,152, afin de se faire remettre les dits deux billets et les dites débentures, et que le défendeur refuse de les remettre;

"Considérant que les dites offres ont été renouvelées par le demandeur et que le montant a été consigné en cour avec la demande;

"Considérant que le défendeur a d'abord plaidé qu'il avait acquis toutes les dites débentures du dit feu John Henry Pangman en échange des dits deux billets qu'il avait remis à ce dernier sans avoir retiré le reçu donné par lui au dit Pangman pour les dites débentures, et que le défendeur n'a aucunement prouvé ce premier plaidoyer;

"Considérant que le défendeur a plaidé par d'autres exceptions que Pangman s'était obligé, le 13 de septembre 1878, à céder et remettre au nommé N. H. Greene, $24,000 des dites débentures pour $1,400, que le dit Greene avait duement accepté cette obligation, et l'avait ensuite cédée au défendeur, et que ce dernier était créancier du dit J. H. Pangman et de sa succession au montant des diverses sommes énumérées dans ses défenses, et qu'il était bien fondé à les offrir en paiement de la dite somme de $1,400, pour acquérir les dites débentures au montant de $24,000 que Greene avait le droit d'acquérir, et en compensation de la valeur des autres débentures;

"Considérant que le défendeur n'a pas prouvé ses défenses;

"Considérant spécialement qu'il n'a pas prouvé que le dit Greene eût accepté avant la mort du dit Pangman, l'obligation que ce dernier s'était déclaré prêt à remplir, de céder et remettre au dit Greene pour $1,400, $24,000 des dites débentures mentionnées dans l'écrit sous seing privé allégué par le défendeur comme étant daté du 13 de septembre 1878;

"Considérant que cette acceptation ne pouvait pas être utilement faite par Gréene ni par le défendeur après la mort du dit J. H. Pangman;

"Considérant que cette acceptation ne pouvait pas se faire validement non plus après que le dit Pangman fût devenu notoirement insolvable, comme le défendeur savait qu'il l'était au temps de son décès;

"Considérant que l'original du dit acte sous seing privé n'a pas été produit en cour qu'après la clôture de l'enquête en cette cause et sur l'ordre donné par la cour en date du 2 de novembre 1883;

"Considérant que la créance du demandeur ès-qualité pour se faire remettre les dites 54 débentures données en gage au défendeur, ne peut pas être compensée légalement par les prétendues créances du défendeur contre la succession Pangman, et que la succession du dit Pangman est restée propriétaire du gage donné;

"Considérant que le défendeur n'a pas prouvé que les débentures que le dit Pangman s'était obligé de céder et remettre à Greene fussent celles, ni même une partie de celles que Pangman avait données en gage au défendeur;

"Considérant que toutes les défenses du défendeur sont mal fondées en droit aussi bien qu'en fait;

"La cour les renvoie avec dépens, et déclare bonnes et valables les offres et la consignation faites par le demandeur en cette instance au greffe de la cour, sujettes à la condition de remise par le défendeur au demandeur des dits deux billets et des 54 débentures en question; déclare le demandeur ès-qualité en droit d'avoir la remise et possession des dites débentures revendiquées; condamne le défendeur à remettre au demandeur sous quinze jours de la date des présentes 54 débentures de $500 chacune, de la Compagnie du Chemin de Fer des Laurentides, et, à défaut par le défendeur de ce faire, dans le dit délai, et ce dit délai expiré, la cour le condamne à payer au demandeur la somme de $27,000, valeur nominale des dites débentures, avec intérêt sur icelle à compter du 8 d'avril 1882, jour d'assignation en cette cause, et les dépens distraits à maître Bonin, avocat du demandeur; sur laquelle somme de $27,000 devra être préalablement déduite celle de $2,152, montant des deux billets en question, consentis par le dit J. H. Pangman en faveur du dit défendeur L. A. Senécal, en date du 31 de janvier 1880, et des intérêts accrus sur iceux depuis leur échéance respec-

tive jusqu'à la date des offres réelles faites au défendeur le six d'avril 1882, par le ministère de Mtre L. N. Dumouchel, notaire, laissant une balance de $24,848, avec intérêt, etc.

Bonin, for the plaintiff.

Lacoste & Co., for the defendant.

SUPERIOR COURT.

MONTREAL, November 30, 1883.

Before JOHNSON, J.

GRAVEL v. HUGHES *es qual.*

Trespass—Responsibility of employer for fault of person under his control.—C. C. 1054.

An employer or parent is responsible for a trespass committed by his children or by persons employed by him or under his control, where he fails to establish that he was unable to prevent the act.

PER CURIAM. The defendant is sued personally and as curatrix to her interdicted husband, for a trespass committed by her and her servants on certain lots of land possessed by the plaintiff under permission of the owners, and used as grazing land for his cows, he being a milkman living near the city. The defendant answers the suit by alleging that she also had possession, and under a permission of the same kind, of a number of lots in the same locality, and which were not divided or distinguishable from those used by the plaintiff.

The difficulty in the case is to ascertain precisely what was possessed by the plaintiff, and which he had an exclusive right to use as grazing land. These lots are numbered, and witnesses who are neighbors, and well acquainted with the place, were heard before me, and proved to my satisfaction that the defendant, through her sons, committed the trespass complained of by driving off plaintiff's cows and putting their own cows there. It was urged that the evidence did not show the trespass by the sons to have been authorized by the mother; but there can be no doubt that the sons who lived with their mother, had no other interest or connection with the matter but as her servants, and under Art. 1054, C. C., she is responsible, unless she proves that she could not prevent them. Now, so far from proving anything of that sort, it is shown here, and not contradicted, that when she was notified by the plaintiff of his exclusive right to the grazing, she replied by assaulting him, and the whole case not only repels the idea of the boys having acted on behalf of any other than their mother, but she and she alone is the person who pretended to have any counter right to that of the plaintiff. She had a permission, no doubt, at one time to use some of these lots from one Jobin, but none of Jobin's lots were in the limits fenced by the plaintiff. On the whole facts therefore I find for the plaintiff.

As to the damages, there is some uncertainty as to the number of cows that were driven off the land, and the time the plaintiff was deprived of the use of it. One hundred and fifty dollars are asked as for the loss of milk from ten cows; on the other hand, it is sworn that the place could not have fed more than three cows. It is certain, however, that in a way it did feed or half feed more than that. I give $50 damages, and costs as of action brought.

Duhamel & Rainville for plaintiff.

E. Roy for defendant.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

Before TORRANCE, DOHERTY and LORANGER, JJ.

DUBUQUE v. DUBUQUE.

Voluntary deposit—Evidence—Judicial admission.

An admission by the defendant, under oath, that he received a voluntary deposit, but had delivered it as requested, cannot be divided; and verbal evidence is not admissible to contradict the accessory statement of delivery, in a case where proof of the deposit could not be made by testimony.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Rainville, J., April 30, 1883.

The action was by one brother against another, to recover the sum of $125 alleged to have been given by plaintiff to defendant to be delivered to their father, Julien Dubuque. The defendant admitted under oath that he had received the money, but had delivered it as requested. The plaintiff then produced the father as a witness, and asked him if he had received the money. The question was objected to and the objection maintained, and there being no further evidence the action was dismissed.

TORRANCE, J. There is no error here. 30 Demolombe, No. 532, gives this very case. Any other doctrine would be extremely dangerous. If the defendant were an unfaithful depositary, there is no legal proof of it against his statement, which cannot be here divided.

Judgment confirmed.

Duhamel & Rainville for plaintiff.

Robidoux & Co., and *Pagnuelo, Q.C.*, for the defendant.