The Legal News.

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PROVINCIAL POWERS OF TAXATION.

The provincial legislature, in imposing a tax upon Banks and other corporations, may be assumed to have acted experimentally. The precise extent of provincial powers can hardly be ascertained with certainty until a province tries to overstep the mark, just as a person shut up in a dark chamber will not know the size of the apartment until he has groped about and encountered the surrounding walls. In this instance the legislature passed a statute which would answer the purpose very well, so far as the raising of the required revenue was concerned, but the Court has discovered as many defects in it as existed in the famous definition of a crab. The taxation is indirect, and the province has only the power of direct taxation; it is borne chiefly by persons who are not inhabitants of the Province, and the legislature has only the power of taxation within the Province; it affects banks and banking, and these are matters wholly beyond the control of the provincial legislature. The decision of Mr. Justice Rainville is only in the cases against banks, but it is obvious that, at all events, the first two grounds for the dismissal of the action in *Lambe* v. *Ontario Bank* will apply to most of the suits against other corporations. It is understood that the case is to be taken to appeal.

JUDICIAL OPINIONS.

The *Ohio Law Journal* says:—"We have received so many communications and so many personal appeals from those who are among the best lawyers in the State, asking what can be done to induce the Supreme Court and the Supreme Court commission to write shorter opinions than usual, and to report *only* those cases entirely novel or involving new legal propositions; that we mention the matter at the risk of being considered meddlers. The tenor of the criticism is not that there exists any prolixity, or that the opinions of the court are at all tedious or long drawn out. It is admitted that every sentence written by each of the judges is full of pertinent meaning. It is only suggested that less might be said. That where authorities are cited in support of the rulings, the simple citation ought to be made to suffice, leaving it to others to draw the conclusions or find the logic of the application. That the Supreme Court need not formulate any argument to justify its rulings; that where the question is new, the reason for the decision may be briefly stated; and where there is a departure from the usual course of decision, that the opinion of the court ought not to be circumscribed.

"The Supreme Judicial Court of Massachusetts is constantly cited as a model, and it must be confessed that that court is wonderfully frugal in the matter of words. The fact of the matter is that some judges of lower courts, who have had but limited experience on the bench, seem inclined to believe that their reputation for erudition depends to an extent, upon the length of their written opinions; while attorneys generally consider that when a judge disposes of a question in a few words, he is master of the authorities and their relation to the case at bar. Attorneys who lose a case in the Supreme Court find great consolation in a lengthy opinion, although it concludes by ruling against them; as if their argument had almost won the court to their view of the case.

"The Supreme Court of Pennsylvania recently, in a case wherein seven eminent lawyers had argued eloquently and learnedly for three days, decided the case and told why, in *two lines*—less than twenty words. It is recorded that the attorneys were not seen "abroad" for as many days, and yet the case was righteously decided and fully reported.

"The statement of this case will occupy several pages of the reports, and the opinion will simply say: 'The judgment of the lower court is affirmed on the authority of *Doe* v. *Roe*, 49 Penn. St. 50.' How many cases might be boiled down to something like these dimensions and marked in the weekly record 'no further report,' we of course cannot say. There may be some and may be none. As an item of news we simply assert that many adhere to the belief that there are some, while others will not admit as much."

THE VISIT OF CHIEF JUSTICE COLERIDGE TO AMERICA.

To the Editor of THE LEGAL NEWS.

DEAR SIR,—It is to be hoped that the bar of this Province will not lose the opportunity of exhibiting their respect for the office and person of the Lord Chief Justice of England who is shortly to visit this continent. A meeting of the members of this the Metropolitan District, should at once be convened and the matter considered. As His Lordship will arrive within a few days, I would request our new and learned *Batonnier* to act in the premises without delay.

Yours, obediently,

M.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, May 4, 1883.

DORION, C. J., RAMSAY, J., TESSIER, J., CROSS, J., BABY, J.

CONROY & ROSS.

Procedure—Interlocutory judgment—Appeal.

The action issued from the Court in Quebec, and was served on the defendant at his domicile in the district of Aylmer.

The defendant filed an exception *déclinatoire*, setting up that the *whole* cause of action did not arise at Quebec. The original contract, which was for advances to get out timber, was made at Quebec. It being found advantageous to sell the timber in England, the parties subsequently agreed that the plaintiff should send the timber there to be sold, the plaintiff paying the expenses at Quebec and in England.

The Court below dismissed the exception, and the defendant moved for leave to appeal.

The COURT rejected the motion.

Motion rejected.

VALLIÈRES & DRAPEAU.

Procedure—Interlocutory judgment—Pleading—Interest in suit.

The action was met by a plea to the effect that the plaintiff's *cédant* was insane at the time he made the *transport;* and, secondly, that the plaintiff Drapeau had no interest in the action and was only a *prête-nom.*

The plaintiff filed an answer-in-law, which was maintained, and the defendant moved for leave to appeal. This application was supported, with regard to the second point, by reference to C.C.P. 19.

The COURT was of opinion that the judgment of the Court below was correct; that the debtor had nothing to do with the insanity of Mr. Saxe, who was not interdicted. The payment by the debtor to the *cessionnaire* of Saxe who was not interdicted, without fraud, was valid. Secondly, the defendant had nothing to do with the sincerity of the interest of Drapeau. (*See Robillard v. La Société de Construction*, 2 Legal News, p. 181.)

Motion for leave to appeal refused.

L'AINÉ & HAMEL.

Procedure — Interlocutory judgment — Appeal — Reference to Experts.

Action *en bornage.* The Court ordered an *arpenteur* to visit the place to establish whether, as it was pretended by defendant, a public highway intervened between his land and that of plaintiff, and if not, to make a report of the state of the premises to the Court. Leave to appeal from this judgment is sought by the defendant: 1st. Because the Court had no right to refer the case to an *arpenteur*, for that was to delegate its authority. 2nd. That if the *arpenteur* was to be considered as an *expert*, three and not one should have been named. (323, C. C. P.)

The COURT was against the party moving. The Court below had a perfect right to make such an order to obtain information, and although generally the rule is to name three *experts*, this does not apply, and has never been held to apply to the nomination of an *arpenteur* on a question of *bornage.* (942, C. C. P.)

Motion rejected.

LESSARD & GENET.

Procedure—Appeal—Service.

Motion to reject appeal. It was urged that the appeal was taken after the delay granted by the Code, and that the Court had no jurisdiction to hear the appeal. The judgment was rendered on the 28th February, security was given on the 2nd April, and the petition was only served on the 7th April. It was also said

that the appeal was not served on the attorney in person, but at the clerk's office.

The appellant answered that the judgment from which appeal is taken was rendered in Review, that it reversed the judgment of the Court sitting in the District of Beauce, and that it was not registered in Beauce till the 30th March. It was therefore in time. (502 C. C. P.) The service on the attorney at his domicile is sufficient. (1148 C. C. P.) Appeal from judgments in Circuit differs in this respect from judgments in cases in the Superior Court (1123 C. C. P.)

The COURT was against the party moving on both questions. (*Bedard & Corporation*, 10 L. C. R., p. 429.)

Motion rejected.

DAWSON & MCDONALD.

Procedure—Application to Court of Q. B. to appoint séquestre.

The respondent applied to the Court to name a *séquestre* under article 645 C. C. P.

The Court, without expressing any opinion as to whether the Court of Queen's Bench had jurisdiction to appoint a *séquestre*, refused the application on the ground that the application had been made in the Court below, that the application had been refused, and that no appeal had been taken from that judgment; and further that the application might be renewed in the Court below.

Motion refused.

PARADIS & LEMIEUX.

Procedure—Appeal.

The judgment in the Court below does not dispose of the case, either intentionally or by over-sight.

The COURT was of opinion that from such a judgment appeal did not lie *de plano*.

Appeal dismissed.

COURT OF QUEEN'S BENCH

MONTREAL, January 27, 1883.

MONK, TESSIER, BABY and CARON, JJ.

HALL es-qual. (plff. below), appellant, and LE MAIRE, etc., de MONTRÉAL (deft. below), Respondents.

Municipal Corporation—Responsibility for libel in pleadings—Prescription.

The prescription of one year, as to libel contained in a pleading, runs only from the date of the final judgment.

The judgment in appeal was as follows:

"Considérant que la présente action est une action intentée par feu J. K. Springle, maintenant représenté par les appelantes, demanderesses en reprise d'instance, pour le recouvrement de dommages au montant de $20,000 qui auraient été causés au dit J. K. Springle par une résolution des défendeurs intimés passée le 7 août 1868, et par une requête présentée par les dits défendeurs intimés devant la Cour Supérieure à Montréal, le 10 août 1868, demandant la destitution du dit J. K. Springle comme commissaire chargé de faire l'évaluation de l'indemnité à payer à l'Hon. Charles Wilson pour l'expropriation d'un terrain requis pour l'élargissement de la rue St. Joseph de Montréal;

"Attendu que la dite résolution et la dite requête contenaient des allégations injurieuses pour le dit J. K. Springle et de nature à faire tort à sa réputation et à ternir son caractère;

"Considérant que le dit J. K. Springle a contesté la dite requête ainsi présentée par les défendeurs intimés, le 10 avril 1868, devant la dite Cour Supérieure siégeant à Montréal;

"Considérant que jugement n'est intervenu en Cour de première instance sur cette requête et la contestation qu'en a faite le dit J. K. Springle, que le 17 septembre 1870, et que la dite Cour de première instance par son dit jugement a accordé les conclusions de la dite requête et renvoyé le dit J. K. Springle de ses fonctions, mais pour cause d'erreur de jugement seulement, résultant de fausses idées sur la loi d'expropriation, écartant comme non fondée les reproches injurieux faits au dit J. K. Springle dans la dite requête des défendeurs intimés;

"Considérant que le dit jugement du 17 septembre 1870, a été porté en appel devant cette Cour par le dit J. K. Springle le 14 juin 1871, et que cette Cour par son jugement du 20 septembre 1873, a déclaré que la dite Cour de première instance avait erré en destituant le dit J. K. Springle de sa charge de commissaire et a cassé le dit jugement du 17 septembre 1870;

"Considérant que les défendeurs intimés ont interjeté appel du dit jugement du 20 Septembre, 1873, à Sa Majesté en son Conseil Privé, et que ce dernier tribunal, par décret du 28 Novembre, 1876, a confirmé le jugement de

cette Cour, et donné gain de cause au dit J. K. Springle, prononçant ainsi un jugement final sur la requête contenant les allégations injurieuses dont s'est plaint le dit J. K. Springle dans son action en cette cause ;

"Considérant que le dit J. K. Springle a institué la présente action le 4 Mai, 1871, pour dommages résultant d'allégations injurieuses faites dans la dite requête des défendeurs intimés, qui était alors encore pendante devant les tribunaux tant de première instance qu'en appel, et dont il n'a été finalement disposé que longtemps après l'institution de l'action, savoir par le dit décret de Sa Majesté en son Conseil Privé en date du 28 Novembre 1876, et que ce n'est qu'à compter de cette dernière date que le délit dont se plaint le demandeur dans son action, délit successif qui s'est renouvelé et perpétué depuis la date de la présentation de la requête devant la Cour de première instance, a complètement cessé, et que la prescription de l'action naissant de ce délit a commencé à courir ;

"Considérant, partant, que dans l'espèce, il n'y a pas lieu à l'application des articles 2,262 et 2,267 du Code Civil concernant la prescription de l'action pour injures verbales ou écrites, non plus que de l'article 2,188 du dit Code, et, partant, que la Cour de première instance, en déclarant par le jugement dont est appel que l'action du dit J. K. Springle était absolument éteinte et prescrite lorsqu'elle a été intentée, et par suite non recevable, a mal jugé ;

"Considérant qu'il est en preuve que ces allégations injurieuses ont causé au dit J. K. Springle des dommages considérables se montant à une somme d'au moins $3,000 ;

"Considérant que les intimés n'ont en aucune manière prouvé ni justifié les dites allégations injurieuses au caractère du dit J. K. Springle ;

"Cette Cour casse et annule le jugement rendu par la Cour Supérieure siégeant à Montréal le 31 Mai, 1880, et rendant le jugement que le dit tribunal aurait dû rendre, condamne les défendeurs intimés à payer aux appelantes, en reprise d'instance *es qual.*, la somme de $3,000 courant, avec intérêt, etc."

Judgment reversed.

Barnard, Monk & Beauchamp, for Appellant.

R. Roy, Q. C., for Respondent.

SUPERIOR COURT.

MONTREAL, April 30, 1883.

Before TORRANCE, J.

LAREAU v. LA COMPAGNIE D'IMPRIMERIE DE LA MINERVE.

Libel.

The plaintiff, a French Roman Catholic, on the eve of an election in which he was a candidate, was falsely charged in the defendant's newspaper with being a Freemason. The charge was calculated to injure, and did injure the plaintiff's candidature. Held, that he was entitled to recover damages.

The plaintiff, a practising advocate in the city of Montreal, was nominated as candidate in the electoral division of Rouville for the House of Commons on the 13th June, 1882, and the voting taking place on the 20th June, the result was that G. O. Gigault, the other candidate, was elected by a majority of 150 votes. On the 16th June the *Minerve* published an article headed "Soyez Francs," in the following words :

"Nous ne sommes pas de ceux qui dénoncent un candidat protestant, reconnu comme tel, parce qu'il est franc-maçon. Nous n'avons jamais songé à publier le portrait des candidats libéraux protestants avec les insignes franc-maçonniques. Mais nous avons le droit de dénoncer comme hypocrites ces candidats soi-disant catholiques qui se présentent dans des circonscriptions catholiques en cachant leur qualité de francs-maçons ;

"Tel est le cas de M.M. Geoffrion, Poirier, Laflamme, et autres candidats rouges, membres de sociétés condamnées par l'autorité ecclésiastique.

"La *Patrie*, feuille maçonnique, n'a-t-elle pas été jusqu'à dénoncer faussement elle-même, il n'y a pas deux ans, des députés français comme francs-maçons, et ne dénonce-t-elle pas actuellement, les anglais orangistes à pleines colonnes ?

"*On ne peut être en même temps francs-maçons et catholiques*," déclarait l'année dernière le "journal *Le Monde Maçonnique*, organe attitré "de la franc-maçonnerie.

"*Notre but final*, disait encore la Vente Su- "prême du Carbonarisme Italien, *est celui de* "*Voltaire et de la Révolution Française.*

"*Il y a deux abominables*, disait une autre au- "torité maçonnique, *le Roi et le Pape.*"

"Que M.M. Huntington, Holton, Ward et

autres candidats libéraux anglais, soient francs-maçons, leur religion ne leur défend pas de l'être, et nous ne songeons pas à les attaquer à cause de cela. Mais nous avons le droit de demander à MM. Geoffrion, Poirier, Laflamme, Lareau, Robidoux, etc., ce qui en est à cet égard, pour ce qui les concerne, eux, candidats catholiques dans des comtés catholiques. Que ces messieurs soient francs-maçons ou membres de sociétés excommuniées, c'est leur affaire; mais qu'on le sache, et qu'il se donnent pour ce qu'ils sont, au lieu de se borner à dénoncer les protestants orangistes ou francs-maçons."

In the same number was an article headed "A propos de Francs Maçons," beginning with these words:—"*La Patrie* est indignée parceque nous avons révélé le fait que MM. Geoffrion et Poirier, entre autres candidats rouges, sont Francs-Maçons." The plaintiff said that he was individually denounced as a Freemason in the above words. He also said that in the number of the *Minerve* of the 17th June the defendant made similar imputations against the plaintiff in an article headed: "Rouges et Francs-Maçons." The words were:—"Nous réaffirmons le fait que ces messieurs sont Francs-Maçons. Nous savons que l'organe rouge Maçonique, publié par le principal dignitaire français de l'ordre en Canada, se prépare à donner une déclaration du sécrétaire général que MM. Geoffrion, Poirier et al. ne sont pas sur la liste." Plaintiff also complained that defendant in its number of the 19th June in the article headed "La Question de Franc-Maçonnerie" reiterated the imputation of Freemasonry against plaintiff. Further, that in the number of the 16th June, the defendant under the head "Les Sociétés Secrètes," where the oath of the Freemasons is given, insinuated maliciously that plaintiff was among them. He affirmed that this journal falsely, maliciously, for revenge and with premeditation, with the view of injuring plaintiff and ruining his credit and destroying his reputation with the public, and with the view of making him lose the confidence, the support and the votes of the electors of Rouville, published the foregoing injurious libel against plaintiff. That these imputations and libels were untrue; that the great majority of the electors of Rouville were Catholics, and plaintiff was a Catholic. That it was forbidden in the most formal manner by the Catholic religion to belong to the society of Freemasons under penalty of excommunication and of exclusion from said religion; that Catholics considered it a crime to belong to the Freemasons and a Freemason to be unworthy of their confidence; that said libels had profoundly injured and humiliated plaintiff; that his good character, credit, respectability and honor had suffered, and said libels had done him irreparable wrong and alienated the support and votes of many electors of Rouville; that the *Minerve* and the numbers of the 16th, 17th and 19th June were circulated in the District of Montreal and the electoral district of Rouville, to the injury of plaintiff.

The defendant by its plea denied that it had affirmed that M. Lareau was a Freemason; it alleged that the federal elections were taking place; that the journals of the Liberal party, including M. Lareau, were denouncing the English Protestant Conservative candidates as Freemasons, and sought to excite the prejudices of Catholic electors against Catholic Conservative candidates because these had as chiefs or allies Protestant English Orangemen or Freemasons. That said articles were published in answer to the attacks of the Liberal press, and put the plaintiff and other Liberal candidates *en demeure* frankly to declare what their position was in relation to societies condemned by the Church; that the defendant was justified in putting this question to Liberal candidates, and was justified in mentioning as it had done the name of plaintiff, because he was one of the candidates of the Liberal party in Rouville; that the writings published by plaintiff and his party relations with the Institut Canadien Society to-day condemned by the Catholic Church, could justify the defendant to make upon the plaintiff the demand contained in the articles complained of.

PER CURIAM. There is no question as to the publication. Further, plaintiff was meant by the articles in question. Defendant says it only put a question to M. Lareau, and it had a right to ask the question and get an answer. The Court does not understand the words referring to M. Lareau as a mere question. They are plainly an accusation that he belonged like other men named to the proscribed order of Freemasons. At the beginning of the article headed "Soyez Francs," we find a denunciation as hypocrites of candidates presenting themselves and hiding

their quality of Freemasons: "Tel est le cas de MM. Geoffrion, Poirier, Laflamme et autres candidates rouges, membres de sociétés condamnées par l'autorité ecclésiastique." It goes on to say, "Nous avons le droit de demander à MM. Geoffrion, Poirier, Laflamme, Lareau, Robidoux, &c., ce qui en est à cet égard, pour ce qui les concerne, eux, candidats catholiques, dans des comtés catholiques. Que ces messieurs soient francs-maçons ou membres de sociétés excommuniées, c'est leur affaire, mais qu'on le sache, et qu'ils se donnent pour ce qu'ils sont," &c. The only suggestion of a question here is in the words, "qu'on le sache," and "qu'ils se donnent pour ce qu'ils sont." But the idea thrown out conspicuously at the beginning is that M. Lareau among others mentioned is a member of societies under the ban of the church. The same idea is unmistakably put forth in the article headed "A propos de Francs-Maçons," beginning with the words, "*La Patrie* est indignée parceque nous avons révélé le fait que MM. Geoffrion et Poirier, entre autres candidats rouges, sont Francs-Maçons." The article of the 16th was circulated in the County of Rouville on Saturday, the 17th, and there is the evidence of credible electors, both Conservative and Liberal, that they understood that the charge was made against M. Lareau that he was a Freemason. We have also unquestionable evidence as to the reputation of Freemasons in the Catholic counties and in Rouville. In a word, the reputation is bad. The country people regard them with horror, says a witness. The explanation is easy to find. Freemasons are under the ban of the church, and it is universally known. If the evidence were wanted, it is found in the deposition of Messire Joseph de Repentigny, Vicaire of Montreal. The effect of the articles in question was most prejudicial to the plaintiff as regards his candidature. Was the accusation true? There was not a word of truth in it. Therefore the defendant should pay damages. These are assessed at $400.

Lebeuf for the plaintiff.

Lacoste & Co. for defendant.

SUPERIOR COURT.

MONTREAL, May 12, 1883.

Before RAINVILLE, J.

LAMBE es-qual. v. THE ONTARIO BANK.

Provincial powers of taxation—Tax on Banks—45 Vict. (Que.) ch. 22.

1. *The tax imposed on Banks by 45 Vict., ch. 22 (Que.) is an indirect tax.*
2. *The tax in question is on the franchise, and as regards a Dominion corporation of which the shares are only owned in part by persons within the province, is not taxation within the province.*
3. *The tax is an interference with the exclusive power of the federal legislature to regulate Banks and the incorporation of Banks.*

The judgment is in the following terms:

"La cour, etc....

"Attendu que le demandeur ès-qualité d'inspecteur de licenses pour le district de revenu de Montréal, réclame pour et de la part de Sa Majesté, la somme de $1,300, étant pour taxes imposées sur la défenderesse en vertu de l'acte de la législature de Québec, 45 Vict., ch. 22;

"Attendu que le demandeur allègue que la défenderesse est une banque incorporée; qu'elle a un capital d'un million et demi de piastres, qu'elle fait des affaires de banque dans les limites de la province de Québec, et qu'elle a un bureau d'affaires en la cité de Montréal, dans le district de Montréal;

"Attendu que la défenderesse plaide qu'elle existe en vertu d'un acte du Parlement de la Puissance du Canada (34 Vict., ch. 5), et des actes l'amendant, que sa place principale d'affaires est à Toronto dans la province d'Ontario, que plus des deux tiers de son capital sont employés dans la dite province d'Ontario, et un tiers seulement dans la province de Québec; que d'après les pouvoirs à elle conférés, par le dit Parlement de la Puissance, la défenderesse a établi plusieurs bureaux d'affaires dans les différentes provinces qui composent la Puissance; que la taxe imposée et réclamée est illégale et inconstitutionnelle, et que la législature de la province de Québec n'avait pas le droit de l'imposer,

1o. Parce qu'elle n'est pas une taxe directe;

2o. Parce qu'elle n'est pas imposée dans les limites de la province;

3o. Parce qu'elle est un empiètement sur les droits du Parlement fédéral de régler le commerce et le trafic et les banques et l'incorporation des banques;

"Considérant que les faits allégués de part et d'autre sont admis par les parties par une admission signée par elles;

"Considérant que la taxe réclamée est imposée sur le droit corporatif (franchise) et leur

privilége de transiger des affaires dans la province de Québec, et non sur la propriété de la banque;

"Considérant que par la loi les banques ont en ce pays le monopole de faire des affaires de banque, et qu'en définitive la dite taxe devra toujours être supportée par le public, et qu'en conséquence elle est indirecte;

"Considérant que la dite taxe sera supportée en définitive par des personnes résidant pour la plupart en dehors de cette province, et que le droit corporatif (franchise) n'est pas situé en entier en cette province, et qu'en conséquence la dite taxe n'est pas imposée dans les limites de cette province;

"Considérant que par l'Acte de l'Amérique Britannique du Nord de 1867, le pouvoir exclusif de régler les banques et l'incorporation d'icelles est attribué au Parlement fédéral;

"Considérant que le dit Parlement a exercé ses pouvoirs à cet égard, qu'il a créé la dite banque défenderesse en cette cause, et lui a permis d'établir des bureaux ou places d'affaires dans tous endroits quelconques dans les limites de la Puissance;

"Considérant que les législatures provinciales n'ont le droit de taxer directement que ce qui existe par leur autorité ou ce qui est introduit par leur permission;

"Considérant que les banques ne sont ni créées par leur autorité ni introduites en cette province par leur permission;

"Considérant que le pouvoir de taxer des législatures provinciales est illimité, dans leur sphère;

"Considérant que si le pouvoir de taxer les banques leur était reconnu, elles auraient droit de les taxer de manière à les faire disparaître et à annihiler les pouvoirs exclusifs du Parlement fédéral dans cette matière, et qu'en conséquence la dite taxe est un empiètement sur les droits du Parlement fédéral de régler les dites banques et de les incorporer;

"Maintient l'exception plaidée par la défenderesse, déclare la dite loi *ultra vires* et inconstitutionnelle quant à la dite défenderesse, et déboute le demandeur ès-qualité de son action;

"Et la Cour recommande que les frais et dépens de la défense soient payés à la défenderesse."

Lacoste & Co., for the plaintiff.
Girouard, Q.C., counsel.
Abbott & Co., for defendant.

COUR SUPÉRIEURE.

MONTRÉAL, 16 avril 1883.

Coram JETTÉ, J.

LA COMPAGNIE D'ASSURANCE MUTUELLE DU FEU DU CANADA v. ALPHONSE BASTIEN.

Compagnie d'Assurance Mutuelle—Action sur billet de prime.

Le défendeur poursuivi sur un billet de prime par la demanderesse, Compagnie d'Assurance Mutuelle de la Province d'Ontario, fait motion avant de plaider, que la compagnie demanderesse soit tenue de produire devant la Cour:

1o. Des extraits ou copies de toutes les résolutions votées par les directeurs depuis l'émanation de la police du défendeur jusqu'à son expiration, déclarant des répartitions sur les membres de la compagnie;

2o. Des extraits ou copies des formalités observées pour la convocation des directeurs aux assemblées ou réunions auxquelles ces résolutions ont été passées;

3o. Le montant des pertes encourues par la demanderesse, pendant la durée de la police du défendeur;

(Les items 4 et 5 furent abandonnés.)

6o. Des extraits ou copies des avis des répartitions au défendeur, lesquels documents devaient être produits sous tel délai qu'il plaira à la Cour de fixer.

Cette motion fut appuyée d'un affidavit du défendeur alléguant qu'il n'a jamais eu avis des assemblées générales de la compagnie, ni des répartitions faites par elle, qu'il n'a jamais eu communication des livres ni d'aucun rapport des affaires de la demanderesse.

La Cour a accordé cette demande, et a condamné la demanderesse à produire sous le délai d'un mois les documents demandés par la motion, avec dépens contre la demanderesse. *

Longpré & David pour la demanderesse.

L. Demers pour le défendeur.

(J. J. B.)

* Un jugement semblable a été rendu en décembre dernier par l'Honorable Juge Bélanger à Beauharnois, dans la cause de "*Beaver Mutual Fire Insurance Company of Toronto*" v. *Noé Legault*.

SUPERIOR COURT.

MONTREAL, April 30, 1883.

Before LORANGER, J.

PINSONNEAULT v. DEGASPÉ, and E. Contra.

Incidental demand, Service of.

The incidental demand in this case was made as follows: Immediately at the conclusion of the plea the defendant opened the incidental demand: "And the said defendant hereby constituting herself incidental plaintiff, complains "of plaintiffs, now incidental defendants, and "declares, &c." This demand was served on the plaintiff's attorneys and filed with the pleas.

The plaintiffs as incidental defendants filed an exception to the form on the following grounds;—

1. Parceque la dite demande incidente n'a jamais été légalement signifiée tel que requis par la loi.

2. Parceque la signification faite par l'huissier de la demande incidente sur Messrs. Judah & Branchaud est illégale, nulle, et de nul effet.

3. Parceque la signification de la dite demande incidente n'a jamais été faite aux défendeurs incidentes tel que requis par la loi.

The Court considered the incidental demand properly made and served, and accordingly dismissed the exception with costs.

Judah & Branchaud for plaintiffs and incidental defendants.

Monk, Monk & Raynes for defendants and incidental plaintiffs.

RECENT DECISIONS, P.Q.

Procedure—Report of Distribution—Hypothec.—It is not competent to hypothecary creditors, who have not been collocated in a report of distribution duly homologated, of the monies arising from a sheriff's sale of the real property hypothecated in their favor, to sue to recover from a party alleged to have been illegally collocated in such report, on the ground that according to the Registrar's certificate attached to the sheriff's return, such party ought not to have been so collocated, and that plaintiffs should have been collocated for the amount of their demand preferentially to him.—*McDonell* v. *Buntin*, 27 L. C. J. 73.

Hypothec. — Where a hypothecary creditor cedes his right of preference on the monies arising from the sale of a portion of the property hypothecated, in favor of a hypothecary creditor, who is only third in rank, such creditor having first rank cannot afterwards claim to rank for his full claim (without deduction of the monies received under said sale), to the prejudice of a hypothecary creditor, who is second in rank, in the distribution of monies arising from the sale of the balance of said property.—*Perodeau & Quintal*, 27 L. C. J. 74.

Master and Servant. — When a commercial traveller, engaged by the year, quits the service of his employer without legal cause and against the will of his employer, and without previous legal notice, he forfeits all claim to wages accrued to the time of his quitting said service.—*Nixon* v. *Darling*, 27 L. C. J. 78.

GENERAL NOTES.

The Affirmation Bill was defeated in the House of Commons, May 4, the Government being beaten on the division.

There may be seen on St. Paul street, Baltimore, the sign of Charles J. Bonaparte, Attorney-at-law, a grand nephew of the great Napoleon. He is an active member of the profession and is considered an able and eloquent advocate.—*Chicago Legal News.*

The following is an extract from a report of a wife-beating case in one of the London police Courts:—John Smith, witness for prosecution, is under examination. "Now, what do you know of the matter, Mr. Smith?" "I know everything. I seed Brown beat his wife." "How did he beat her?" inquired the magistrate, "How did he beat her?" exclaimed the witness with a look of scorn, "how would you beat your wife?" The magistrate desired the witness to answer the question. "Well," said the witness at length, "Brown uses his boots, as I never do. I only uses my fists. I have often told him those here boots would get him into trouble!"

BAR OF MONTREAL.—The following are the office-bearers elected for 1883-4:—Bâtonnier, C. A. Geoffrion; Syndic, J. E. Robidoux; Treasurer, M. M. Tait, Q.C.; Council: S. Bethune, Q.C., L. R. Church, Q.C., C. C. de Lorimier, Q.C., F. L. Béïque, R. Laflamme, Q.C., A. Lacoste, Q.C., W. W. Robertson, A. H. Lunn; Secretary, A. E. Poirier.

ST. FRANCIS.—The office-bearers elected for the current year are as follows:—Bâtonnier, Wm. White; Syndic, J. A. Camirand; Treasurer, L. E. Panneton; Secretary, H. W. Mulvena; Council, J. W. Merry, S. B. Sanborn, H. C. Cabana.

QUEBEC.—The office-bearers are as follows:—Bâtonnier, J. G. Bossé, Q.C.; Syndic, C. B. Langlois; Treasure, D. J. Montambault; Secretary, R. J. Bradley; Council, G. Irvine; F. Langelier, J. Malouin, Andrews, Morrissette, Dunbar, Jules Larue, Jean Blanchet.