The Legal News.

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GOVERNMENT BONDS. — PREMIUM PAYABLE ON CHANCE.

A question of some interest was decided recently by the New York Court of Appeals in the case of *Kohn* v. *Koehler*. The question was whether Austrian Government bonds, on which there was a premium payable upon chance, could be considered a lottery. The action was brought under a rather peculiar provision of the Revised Statutes (2 R. S., 6 Ed. 923), which declares that "any person who shall purchase any share, interest, ticket, certificate of any share or interest, or part of a ticket, or any paper or instrument purporting to be a ticket, or share, or interest in any ticket, or purporting to be a certificate of any share or interest in any ticket, or in any portion of any illegal lottery, may sue for and recover double the sum of money, and double the value of any goods or things in action which he may have paid or delivered in consideration of such purchase, with double costs of suit." The bond in question provided for the payment of the sum of one hundred gulden by the Austrian government, in accordance with the conditions indorsed on the back of the same, together with one fifth part of any such sum as may be allotted to the prize number of the bond, which sum must amount to at least one hundred and twenty gulden, with interest as provided. Under the rules and regulations indorsed on the bond, relating to the drawing and redemption of the bonds, of which the one in question constituted a part, provision was made for the drawing of the bonds by a division into series, and the drawing of a certain number of series tickets to be deposited in a wheel to await the drawing of the prize numbers. At a time named a drawing was to be had from the series numbers, and provision was also made for the drawing of the prize numbers deposited in another and separate wheel, and the last named drawing designated the numbers which were entitled to prizes, which prizes varied from six hundred gulden to 300,000 gulden. Under the terms of the loan for which the bonds were issued, the holder was entitled to receive his principal and interest and a premium of twenty per cent., and what was termed a prize, if by the drawing provided for he became entitled to the same. The bonds referred to were issued by the Austrian government for the purpose of obtaining a loan of money, and the holders or owners received the same upon payment of the amount of principal therein named. The evident object of the government in issuing the bonds was to obtain money for its own use and benefit.

The Court said: "According to the true interpretation of the instrument, the government, upon receiving the money, promises to pay the principal, interest and premium named, and in addition any sum which may be drawn by the holder of the bond, in accordance with the rules and regulations indorsed upon the same. This additional sum depends upon a contingency which is to be decided by lot or chance. Independent of this the amount and the terms are fixed by the conditions of the bond. The substance of the transaction relates to a loan of money to the government and the provision made for its payment. This is the main object and purpose for which authority was given to issue the bonds, and they were disposed of evidently, having this in view. The provision by which, upon a certain contingency, the holder of the bond might receive an additional sum, was, no doubt, an inducement held out for the purpose of obtaining money on the same, but it did not constitute the main feature and the substance of the transaction between the government and the purchaser of the bond. It was a mere appendage and an incident to its main purpose, by means of which the holder might by chance receive a larger sum than the principal, interest and premium which the bond itself provided for."

The Court, upon these facts, was of opinion that in loaning money on these bonds the holder runs no risk of loss, and he took the chance which might arise in case it should

be determined by lot that his bond was entitled to a larger sum than the principal, interest and premium, which he was sure to get in any event. While this latter privilege depended upon chance, it did not convert the bonds into lottery tickets.

IMMUNITY OF ARBITRATORS.

The question of immunity of judges came up in a new form in the recent case of *Hoosac, etc., Co.* v. *O'Brien*, before the Supreme Judicial Court of Massachusetts. The plaintiffs alleged that their own physician Sprague, a lawyer named O'Brien and one Hogan conspired to defraud the company. Hogan was injured by an accident and placed under the care of Sprague who, it was alleged, fraudulently induced Hogan to pretend that he was much more severely injured than in truth he was, and to refuse suitable nursing and food to prevent his rapid recovery. An action of damages which had been instituted by Hogan against the company was referred under a rule of court to Sprague and two others. The referees united in an award against the company of $3,600, on the ground that Hogan was permanently injured. The award was paid and it was alleged that Sprague and O'Brien (the plaintiff's lawyer) retained to themselves $1,600. The company averred a conspiracy to defraud, and sued Sprague and O'Brien to recover the amount. Sprague demurred and the Court sustained the demurrer on the ground that he acted as arbitrator. Chief Justice Morton said:—"The principle is too well settled to require discussion, that every judge, whether of a higher or a lower court, is exempt from liability to an action for any judgment given by him in the due course of the administration of justice. *Yates* v. *Lansing*, 5 Johns. 282, and 9 Johns. 395; *Pratt* v. *Gardner*, 2 Cush. 63, cited. A similar immunity extends to jurors. The question whether a like immunity extends to arbitrators seems never to have arisen in this Commonwealth. An arbitrator is a quasi-judicial officer under our laws exercising judicial functions. There is as much reason for protecting and insuring his impartiality, independence and freedom from undue influences as in the case of a judge or juror. The same considerations of public policy apply, and we are of opinion that the same immunity extends to him. *Jones* v. *Brown*, 54 Iowa, 74. It follows that this suit cannot be maintained against the defendant Sprague, and his demurrer must be sustained."

O'Brien also demurred, but his demurrer was overruled. The Chief Justice said:—"The demurrer of the defendant O'Brien presents a different question. The immunity from actions extended to Sprague on grounds of public policy does not protect O'Brien. If a lawyer who brings a suit, by suborning witnesses, by bribing the judge, jury or arbitrators, or by other corrupt and illegal practices, procures an unjust judgment against his adversary, we know of no legal reason why he should not be responsible for his illegal acts to the party injured. He is not exonerated because, for reasons which do not apply to him, a joint tortfeasor cannot be reached. *Rice* v. *Coolidge*, 121 Mass. 393. The defendant contends that the judgment founded on the award cannot be impeached, and that it is conclusive on the plaintiff, and while unreversed prevents him from maintaining this action. This argument is founded upon a misapprehension of the effect of the former judgment. The parties in this suit are not the same as in the former suit. The plaintiff in this suit does not impeach the former judgment; on the contrary, the plaintiff relies upon it and the fact that it is conclusive as between it and Hogan, is the foundation of its claim against O'Brien. The plaintiff may have to try in this suit, one of the issues involved in the former suit, viz: the extent to which Hogan was injured, but this furnishes no reason against maintaining this suit."

CONSOLIDATION OF STATUTES.

To the Editor of the LEGAL NEWS:

May I, through the columns of your paper, suggest to the commissioners appointed to consolidate and revise the statutes of Canada, a change in their mode of redaction, which I am sure would be a great benefit both to the bar and the bench and which would

give but a little more work to the commissioners?

That is this, instead of putting in margin of the sections of chapters a synopsis of their contents, as it is now written in our statutes, I propose to do what is done in Revised Statutes of Massachusetts and I suppose also in other states, that is, to place at the head of every chapter a synopsis of the contents of every section, so that at a glance a person will be able to see all the matters contained in such chapter, and to place in margin of every section, notes referring to decisions of the Courts interpreting such sections, which have been reported. This would save a great deal of labor to those interested in hunting up precedents, to find out the true meaning of the text of the law.

Respectfully yours,

C. PACAUD.

Montmagny, Sept. 25, 1884.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, September 23, 1884.

Before DORION, C. J., MONK, RAMSAY and CROSS, JJ.

RAE (plff. below) Appellant, and LA COMPAGNIE DU CHEMIN MACADAMISÉ DE LAPRAIRIE (deft. below), Respondent.

Contract—Measurement of stone.

The question was whether the measurement of stone should be before or after it was broken. Held, that although the general practice was to measure it after it was broken, yet the circumstances might lead to a different inference, and as the only reliable measurement in this case was made before the stone was broken, and the matter was determined in favor of that measurement by the inspector named under the terms of the contract to settle the value of the work, the contractor was bound by that measurement.

CROSS, J. Mr. Rae is the transferee of Parker, a contractor for the macadamizing of three miles of the company's road at Laprairie. He claims $1,600 as balance due him under the contract.

The defence is that the company only owe $429.18, which was tendered before action brought, and the judgment goes only for the tender, with costs of contestation against Rae, who appeals from the judgment.

By the contract Parker was to be allowed $5 per toise for breaking the stone, $3 per toise for carting it and putting it on the road, and 25 cents per yard on the lineal extent of the road macadamized.

The controversy turns chiefly on the question whether the stone should have been measured before or after it was broken. The weight of evidence goes to show that it is the custom to measure the stone after it is broken, but much depends on the terms of the contract and the circumstances of each case. In this instance the stones were purchased from the farmers along the line of the road. They were measured as purchased, in their unbroken state, and no other measurement of them was made until the road was finished, when a measurement was made of the macadam on the road, necessarily imperfect and uncertain from the difficulty of measuring its thickness, the width, too, not being uniform, so that really but one reliable measurement was made, and that was of the stones before they were broken.

One of the company's pretensions, which should have been mentioned before, was that the finishing of the road was delayed a whole year after the time promised, and a penalty of $10 per day was stipulated for delay on this head, but the company on this pretension reduced their claim to the amount of the interest for one year on an advance of debentures before Parker was entitled to them; they consequently limited their demand for damages to the amount of the year's interest on the debentures delivered by anticipation.

To this demand for damages Rae says that Parker was never put *en demeure*, and consequently was not subject to the penalty under Art. 1134; but in this case time was made an express condition of the contract, and no penalty is really asked. The interest is no more than a matter of account, for which the contractor is fairly bound by the payment being anticipated.

The primary question seems decisive. The contract contained a provision (Sec. xvii.,

latter part of § 3) which declared that "la valeur des travaux sera constatée par l'inspecteur que la compagnie aurait droit de nommer." The company named Mr. Beaudry inspector; and he determined the whole matter. It is contended he went beyond his functions, but it seems to me that the object of his nomination and the provision in the contract were to determine to what amount work had been done according to the terms of the contract. He allowed for the work as if the stone had been measured before being broken, and there are circumstances to support this view. The stone was purchased by the company from the farmers along the line of the road, and had a suitable measurement as piled by them. It was by the company furnished to the contractor as so many toises. He may be presumed to have broken the stone according to the toise measure by which it was delivered to him, and no other reliable measurement having been made, it seems to me this measurement must stand, although it may possibly work a hardship to the contractor. He seems also to complain of the result, having, as he pretends, been promised that he would lose nothing by the contract. This may be so, but there is no legal proof of it, and as regards the damages, he was certainly in default as to time, and what the inspector allowed should stand. He is allowed $150 for extra work, which he could not have recovered for want of a writing had it been disputed. I would allow the judgment to stand.

Judgment confirmed.

Robidoux & Fortin for appellant.
Loranger & Beaudin for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, September 23, 1884.

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

COURNOYER-PAULET et al. (defts. below), Appellants, and GUEVREMONT (plff. below), Respondent.

Servitude—Dam—Rights of proprietor of inferior lands.—C. S. L. C., cap. 51.

The proprietors of inferior lands on a stream have an action of damages against the proprietor of the superior lands for any interference with the flow of water which aggravates the servitude to which the inferior lands are subject.

The appeal was from a judgment rendered by Mr. Justice Gill in the district of Richelieu, condemning the appellants to pay $40 damages caused by the flooding of respondent's land. The action was instituted in the first place in the Circuit Court, for $99, and was evoked to the Superior Court. The appellants are owners of a mill on the 1st River Pot-au-Beurre, in the Parish of Sorel, which mill is worked by the water of the stream, and the damming of the water, it was alleged, caused the respondent's fields in the vicinity to be flooded and part of his hay to be injured. The judgment of the court below held that chapter 51 of the Consolidated Statutes of Lower Canada does not deprive the owners of lands lying along streams of the common law right to claim damages caused by mill-owners erecting dams for the purposes of their mills.

RAMSAY, J. This suit seems to have been got up to illustrate all the evils which may be made to attend on our extraordinary system of practice. It certainly cannot have been instituted or carried on for any practical advantage to either of the parties. We have loose pleading, no settled plan of attack or defence, in other words no conception of legal rights, and a consent *enquête* at length about everything and anything, elaborated by the intelligent speculation of the short-hand writer.

The action is for damages done to hay on 10 or 12 acres of very low-lying land at the mouth of a creek known as the Rivière Pot au Beurre. The story of the appellant is this, that his men went to cut hay on the 15th of August, 1880, that they worked three days and cut 900 bundles, that on the night of the 17th, the weather being beautiful, they went to sleep in the barn on the land, and that when they awoke in the morning there was a high wind and the water was lapping against the sills of the barn, and when they went out they found that the river had risen four feet and inundated the land and destroyed or greatly injured the hay, and they say the damage amounted to $200. They also depose that the cause of the damage was

the use made of the water by the defendants, who are mill owners on the creek. That in summer, not having enough of water to drive their mill continuously, they retain the water by a dam, and then let it escape, by spurts, when they have grain to grind. This, plaintiff contends, is an aggravation of the natural servitude to which the lower land is subject, and that it is the direct cause of the damage.

The defendants contend that they have only used the water according to their right; that the superior proprietor is entitled to use the flowing water passing through his land, and that his only obligation towards the inferior proprietor was to return the water to the river before it reaches his land; and add, that there is no instance of an action of this sort by the inferior proprietor, and no law to support it. As a matter of fact, they contend that the flooding of plaintiff's land is in no way attributable to them or their acts; that the flood described could not have been occasioned by any use they had made of the water, and that in any case the thing which determined the damage was the neglect to keep the mouth of the river clear of obstructions, which was due to the refusal of plaintiff to allow the ordinary works to be performed opposite his land. They further contend that defendants' work had been in existence for fifty years, and always existed in its present state, and that therefore it was too late now to object to their using their property in the way they had always done.

If the appellant had no other ground of defence than this, that the inferior proprietor had in law no such action as the one he has brought, his appeal would be easily disposed of. There is perhaps no branch of the law which has longer and more continuously occupied the attention of jurists in all parts of the world than the right to the use of water, and the injury any interference with it might occasion; and difficult as the application of the law may be in practice, its general principles are not doubtful. The right of action of the proprietor of the inferior land against the proprietor of the superior land is identical with that of the latter against the former, as the following texts of the Roman law decide: Dig. Bk. xxxix, Title. III., §§ 8, 10 and 13.

It is unnecessary to examine the last defence put forward by appellants, for it is not pleaded. There is no special issue before the court as to whether appellants have acquired rights by the acquiescence of the neighbouring proprietors. I may further add that the much misunderstood citation from the C. S. L. C. in no way applies, for what respondent seeks is an indemnity in the shape of damages.

We are, therefore, reduced to a simple question of fact, whether the dam erected by the appellants has aggravated the servitude of the lower land so as to create any appreciable damage. The court below decides that it has done so to the trifling amount of $40, and by its judgment has reduced the costs by the taxation, assignation and depositions of Nelson, Aubuchon, Fr. Lemoine, J. B. Lemoine and Ethier, whose testimony is declared to be totally useless, and one-third of the costs of the depositions of the rest of plaintiff's witnesses, owing to their useless prolixity. If there was a little more of this discrimination as to costs, it would probably have a beneficial effect on our practice.

It appears to be satisfactorily proved that plaintiff's land was flooded on the morning of the 18th August, 1880. But when we turn to the cause of the inundation, there is not the same certainty. There is no positive testimony of an eye-witness who saw the course of the flood, and it is only by the testimony of one of the defendants that we know that the sluice gate was open on the afternoon of the 27th, and till dusk. We have, therefore, only a theory to deal with. The witnesses say the water did not come from the St. Lawrence, the weather was fine, and it must have come from above and by the opening of defendant's mill. As to the fineness of the weather, there is some contradiction among plaintiff's witnesses, but let us take it for granted the flood was not caused by rain, and let it be taken for granted that the water came from the opening of the sluice, we still don't see that plaintiff has made out his case. The best test of plaintiff's theory is its probability. Of this we are as good judges as the witnesses, who had no more facts before them than we have. We know that the sluice has an opening of 14 inches. We also know that the

accumulation of two days' water in summer escapes in twelve hours, that is to say, that the flow of the river by the sluice gate is four times more rapid than the natural flow of the river. Therefore, if the sluice be constantly passing 14 square inches of water, that is equal to 28 square inches instead of 14. Now will any one in his senses pretend that a river 20 feet wide and two and a half or three feet deep could be filled by 28 square inches of water, unless there was some stoppage in the flow, or that such a flow could, if uninterrupted, produce an effect on the neighbouring lands? It would be different if the flow was interrupted by another obstacle, but appellants are not liable for the failure to keep the river open according to the *procès verbal* constituting the river a discharge, and regulating the works to be kept up upon it.

It seems to us to be highly probable that the damage was due to the failure to keep the mouth of the river clear. It is evident that this flooding was not an ordinary occurrence. There were no complaints before in summer from below. But this question it is not essential to decide. It suffices to show that the theory of the plaintiff is untenable. Nevertheless, it may not be amiss to observe, that several of plaintiff's witnesses support this view, or at any rate throw doubts on plaintiff's theory. Ed. Labarre (p. 43) says:—"Je ne puis pas m'imaginer à une distance comme cela, et dans une secheresse comme cela, rien que la marche du moulin puisse mener tant d'eau pour mouiller tout son foin." Again, at page 48, he is asked:—

Q. "Vous dites donc que si la rivière était nettoyée comme il faut sur la terre du demandeur et dans la débouche dans la Baie Lavallière il n'y aurait pas d'inondation?

R. "Il ne faut pas se tromper: la terre du demandeur est en débouche, il y a un peu de notre faute au public.

Q. "L'eau séjourne-t-elle, sur la terre du demandeur, parce que la débouche n'est pas nettoyée?

R. "Il n'y pas d'autre chose, suivant moi. La rivière est bouchée, et quand l'eau est rendue là, elle se répand partout."

At page 49, the same witness tells us that having charge of the creek as syndic he had it cleared nine years before, and that this is the first complaint in summer since. Benjamin Larochelle fils, says (p. 105) that the river has "assez de chute," to run off all the water when the sluice is open and the mill running. This was in examination in chief, and though pressed again on the point he repeats the same thing. At p. 139, Joseph Mathieu, also in examination in chief, attributes the inundation to the absence of "débouche." At p. 167, Frs. Lemoine attributes the flood to the river not being "en ordre," and Paul Joly at page 199 thinks "que l'eau devrait s'égoutter facilement, si la rivière était nettoyée." Again, Jean Baptiste Lemoine, speaking generally, said the mill did no damage below, to the great disgust of the counsel who was interrogating him. The whole proposition became so untenable, except by admitting that the river had not been kept clear according to law, that there was a faint attempt to show that the dam had "crevée," but this story, unlike the dam, would not hold water.

It seems to me, then, clear that the plaintiff has not made out his case. Having arrived at this conclusion it becomes unnecessary to lose time reading a volume of 158 pages of evidence. I have, however, read some of it, curious to see how so much could be said about so little, and if what I have not read contains no more matter that what I did read, it is not worth reading for any object. In addition to this, the factum sets at defiance a rule of practice which has been in force for nearly five years. It is ordered that "the case shall be printed on paper of eleven inches by eight inches and a half, the type to be small pica, leaded face," &c. The type is not "small pica, nor leaded face." The labourer is worthy of his hire, but he should earn it; and if lawyers are to be paid they should attend to their business.

We are, therefore, to reverse, with costs of the lowest action of the Superior Court, and without any costs for witnesses or for the factum in appeal. The case was unnecessarily evoked from the Circuit Court to the Superior Court, and we give costs only of the action as brought. The costs of the evidence will not be taxed at all as against the adverse party. The appellant will get his costs but

each party will have to pay the costs of these enormous paper books.

Judgment confirmed, TESSIER, J., dissenting.

A. Germain for Appellants.

J. B. Brousseau for Respondent.

COURT OF REVIEW.

MONTREAL, March 31, 1883.

Before TORRANCE, DOHERTY and RAINVILLE, JJ.

LERIGER dit LAPLANTE v. PINSONNEAULT.

Action en séparation de corps—Abandonment of matrimonial domicile.

An action en séparation de corps by a husband, based on the sole allegation of abandonment by the wife of the matrimonial domicile, is good in law.

The judgment of the Court, which fully explains the question presented for decision, is as follows :—

" La cour, etc.

" Attendu que le demandeur poursuit la défenderesse en séparation de corps ; qu'il allègue que la défenderesse son épouse avait pris contre lui une action de même nature, laquelle a été renvoyée par jugement rendu le 20 octobre 1877, que sa dite épouse avait eu permission de se retirer chez son père pendant l'instance : que depuis le dit jugement déboutant son action la dite défenderesse n'était pas retourné au domicile conjugal malgré que le dit demandeur ait toujours été prêt à la recevoir comme il l'est encore, et qu'elle a toujours persisté encore à ne pas vouloir vivre avec lui ;

" Attendu que la défenderesse a plaidé par une défense en droit invoquant comme moyens : 1o. qu'aucune des allégations de la déclaration ne constitue en droit un motif ou une cause suffisante pour baser une action en séparation de corps ; 2o. qu'il y a contradiction entre les conclusions et les premisses en ce que le dit demandeur allègue qu'il a toujours été prêt à recevoir chez lui son épouse et que les conclusions ne découlent pas des dites premisses ;

" Considérant que bien qu'aux termes de l'article 198 du Code Civil la femme dont l'action en séparation a été renvoyée est tenue de retourner chez son mari, sous tel délai qui est fixé par la sentence ; que bien qu'il ne soit pas allégué que le dit jugement ait fixé tel délai et que de fait il n'en fixe pas, le dit jugement faisant partie de la déclaration, il n'en est pas moins certain qu'en loi la défenderesse était obligée de retourner avec son mari, en autant que d'après les allégations de la déclaration et d'après la loi elle n'était autorisée à se retirer chez son père que pendant l'instance ;

" Considérant que bien que l'article 197 du Code Civil ne classe que le refus du mari de recevoir sa femme, et de lui fournir les choses nécessaires à la vie comme cause spécifique de séparation de corps, le refus de la femme de retourner chez son mari peut suivant les circonstances, constituer une injure grave et être une cause de séparation de corps ;

" Considérant que la femme en retournant avec son mari peut faire tomber la présente action ;

" Considérant qu'aux termes de l'article 199 du Code Civil, le refus de la défenderesse ne fut-il prouvé et persistant, le tribunal pourrait suspendre son jugement pour donner le temps aux parties de se reconcilier ;

" Considérant en conséquence que l'action est bien fondée et que les allégations en sont suffisantes, et qu'il y a erreur dans le dit jugement du 5 décembre 1882, qui a maintenu la défense en droit et renvoyé l'action ;

" Casse et annule le dit jugement, et procédant à rendre celui que la dite cour de première instance eut du rendre dans l'espèce, déboute la défenderesse de sa dite défense en droit avec dépens tant de la dite cour de première instance que de cette cour, distraits à maître Thomas Brossoit, avocat du demandeur, et ordonne que le dossier soit remis à la dite Cour Supérieure à Beauharnois."

Judgment of S. C. reversed.

Thos. Brossoit for Plaintiff.

Laflamme & Co. for Defendant.

SUPERIOR COURT.

MONTREAL, September 15, 1884.

Before JETTÉ, J.

THE BANK OF BRITISH NORTH AMERICA v. WHELAN.

Procedure—Delay to call in warrantors—Vacation.

The delay of eight days to call in warrantors, referred to in C. C. P. 123, does not run during the period between 9 July and 1 September.

This was a hearing on law, on the issue raised by the answer in law filed by the plaintiff to the dilatory exception filed by the defendant.

By the dilatory exception the defendant declared that he had instituted an action in warranty against his warrantor on the 4th of September, 1884.

As the action in warranty was instituted long after the expiration of eight days from the service of the original action, the plaintiff by the answer in law contended that under Art. 123 of the Code of Procedure the exception was bad in law.

At the argument, the defendant invoked Art. 463 of the Code of C. P. as suspensive of the delay referred to in said Art. 123 during the period from the 9th of July to the 1st of September, 1884.

The following was the judgment of the court:—

"La Cour * * * considérant que bien que le défendeur qui veut appeler garant soit mis en demeure d'agir par l'assignation principale à lui faite, et que le délai qui lui est accordé à cette fin compte du jour de telle assignation et non du jour de l'entrée ou rapport de la demande principale, néanmoins il résulte de l'Article 463 du Code de Procédure Civile que tous délais relatifs à la plaidoirie et à l'instruction sont suspendus pendant la période qui s'écoule du 9 juillet au 1er septembre;

"Considérant que relativement à la demande principale, l'institution de la demande en garantie est matière d'instruction et que par suite, la disposition du dit Article 463 s'y applique;

"Considérant que dans l'espèce le défendeur ayant comparu le 1er septembre et institué sa demande en garantie le 4, il s'est pourvu dans les délais requis par l'Article 123;

"Considérant que pour les fins de l'adjudication sur la réponse en droit de la demanderesse, l'allégation du défendeur qu'il a pris sa demande en garantie le 4 septembre suffit pour que le fait soit considéré établi;

"Considérant en conséquence que la réponse en droit de la demanderesse à l'exception dilatoire du défendeur ne saurait être maintenue;

"La renvoie avec dépens distraits à maîtres Doherty & Doherty, avocats du défendeur.

Answer in law dismissed.

Bethune & Bethune for plaintiff.

Doherty & Doherty for defendant.

SUPERIOR COURT.

MONTREAL, March 31, 1883.

Before LORANGER, J.

BROWN v. DEMERS, and DEMERS, petr.

Procedure—Delay—Pétition en nullité de décret.

The delay of service of a petition en nullité de décret is the same as on an ordinary summons as regulated by Art. 75 of the Code of Procedure.

The text of the judgment fully explains the question decided:—

"La cour, etc.

"Considérant qu' aux termes de l'article 715 du Code de Procédure Civile, la procédure sur requête en nullité de décret doit être instruite en la manière et dans les délais des poursuites ordinaires; que sur la signification de la requête au demandeur et aux parties intéressées dans la cause les délais doivent être ceux indiqués par l'Article 75 du dit Code;

"Considérant que dans l'espèce la dite requête, faite rapportable et rapportée le 4 décembre 1882, n'a été signifiée à la demanderesse que le 28me jour de novembre précédent, et que les délais accordés à la dite demanderesse sont insuffisants; qu'aux termes de l'Article 116 du Code de Procédure Civile la présente exception à la forme est bien fondée;

"Maintient la dite exception à la forme des intimés et renvoie la dite requête en nullité de décret avec dépens distraits à Maîtres Robertson, Ritchie & Fleet, avocats des intimés, sauf au requérant à se pourvoir de nouveau."

Exception à la forme maintained.

Calder for Petitioner.

Robertson, Ritchie & Fleet for Respondents.