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BY

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TABLE OF CASES

REPORTED, NOTED, AND DIGESTED,

IN VOL. V.

ERRATA.

P. 12.—Supply "A" at beginning of first line of head note.
P. 23.—"Ross et al. v. The Canada Agricultural Ins. Co." should read "Ross et al. v. Franchère."
P. 41.—For "26th of February" read "26th of January."
P. 56, 9th line.—For "7 Q. L. R. 307" read "7 Q. L. R. 309."
P. 106.—Supply "*Before* Torrance, J.," above case of *Lefaivre v. Belle.*
P. 124.—For "attributable to the master or crew," read "attributable to the Appellants."
P. 145, 2nd line.—For "No. 18" read "No. 19."
P. 370, 2nd column, at 6th line, should read "That the power to *make these assessments was given them by law,* and that the Directors in so acting," &c.
P. 397, 2nd column, read "*Wotherspoon & Co.* for Appellant, *Butler* for Respondent."

The Legal News.

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LOCAL AND FEDERAL JURISDICTION.

We have before us the opinion of the Judicial Committee of the Privy Council in appeals from the Supreme Court in two cases: one against the Citizens Insurance Company of Canada, and the other against the Queen Insurance Company. The decision is, in some respects, one of the most important of the kind that has been rendered. In speaking of the difficulty of reconciling, in some cases, sections 91 and 92 of the B.N.A. Act, their Lordships say: "In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide in each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand." If these words of counsel are taken in their naked sense, they express a truism. It may be taken for granted that courts and judges will decide as best they can, and it hardly seems necessary to warn them of the inconvenience of *obiter dicta*. But if their Lordships mean to convey by their homely advice, that because the limits of the powers conferred by the B. N. A. Act on the Dominion and Local Legislatures give rise to serious difficulty, therefore those who are called upon to define them are not to seek for a guide in the general spirit of the Act, or in general reasoning, then we must demur to the soundness of the admonition. At any rate their Lordships find the impossibility of adhering to such a doctrine, for a few sentences further they say: "It becomes obvious, as soon as an attempt is made to construe the general terms in which the classes of subjects in sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication, or reasonable intendment, be modified and limited." If it be possible to make a distinction between the mode of interpreting one statute and another, we should think that a statute which gives a constitution to a people should be dealt with in a wider and more comprehensive manner than an ordinary act. It has a well-considered policy and a history, and if we are to have each test case decided on the narrowest view of its merits, generations may pass away before we have any certainty as to whether any law on our statute-books is within the powers of the Legislature by which it was passed. It is precisely because the Judicial Committee has taken a wide view of the terms of the act in the decision in question, that it has a value, perhaps, greater than any of its predecessors. Their Lordships begin with a discussion as to the scheme of legislation of the Imperial Parliament with regard to the distribution of legislative powers between the Dominion Parliament and the Local Legislatures. They point out that by the first branch of section 91, the former has a general authority to make laws *not* coming within classes of subjects exclusively assigned to the latter. They then proceed to explain the difficulty arising from the double enumeration of exclusive powers, and the effort made to obviate the inconveniences to which, it was apparent, it might otherwise give rise. They say: "If the 91st section had stopped here, and* if the classes of subjects enumerated in section 92 had been altogether distinct and different from those in section 91, no conflict of legislative authority could have arisen. The Provincial Legislatures would have had exclusive legislative power over the 16 classes of subjects assigned to them, and the Dominion Parliament exclusive power over all other matters relating to the good government of Canada. But it must have been foreseen that this sharp and definite distinction had not been and could not be attained, and that some of the classes of subjects assigned to the Provincial Legislatures unavoidably ran into and were embraced" (*i. e.* to some extent?) "by some of the enumerated classes of subjects in section 91; hence an endeavour appears to have been made to provide for cases of apparent conflict, and it would seem that with this object it was declared in the second branch of the 91st section, 'for greater certainty, but not so as to restrict the generality of the foregoing terms of the section,' that (notwithstanding anything in the act) the exclusive legislative authority of the Parliament of Canada should extend to all matters coming within the classes of subjects

* Probably "or."

enumerated in that section. With the same object, apparently, the paragraph at the end of section 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of section 92." The paragraph at the end of section 91 can have no signification beyond its grammatical construction. It is a totally unnecessary enactment, for a general power is limited by a special, and the supremacy of the Dominion powers, when, or if, they clashed with those of the Local Legislatures, was already provided for. Their Lordships continue: "Notwithstanding this endeavour to give pre-eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the Legislature could not have intended that the powers exclusively assigned to the Provincial Legislature should be absorbed in those given to the Dominion Parliament." The idea seems to be this, that where a power, very special by its nature, is given by either enumeration, it will absorb so much of any power, more general by its nature, given to the other enumeration, as is necessary for the exercise of the more special power. Several cases have arisen where in the exercise of a Dominion power a conflict arose with regard to a local power, as, for instance, in the case of the limit of the right of appeal in insolvency. This, it was contended, was *ultra vires*; that Parliament could only lay down the principles of insolvency, but could not prescribe the procedure. From what has been said it is evident that the decision of such a question did not necessarily involve the case of a local law coming in conflict with a Dominion power; nevertheless, the form of the decision in the case of *Cushing & Dupuy* seems to be dictated by the wider view of the statute, now more definitely expressed. The Judicial Committee held, "that it is a necessary implication that the imperial statute in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency, intended to confer upon it legislative powers to interfere with property, civil rights and procedure within the Provinces, so far as a general law relating to those subjects might affect them."

The principle invoked seems reasonable and convenient; but it is not an ordinary rule of interpretation. The two cases offered as an illustration are not well chosen. The former is an instance of ordinary interpretation of the meaning of words as used. Although in one sense the words "marriage and divorce" may be said to cover "solemnization of marriage," in another sense they have a different signification. Marriage is used in its relation to divorce, and not as meaning all matters connected with marriage, at any rate not such as come within the meaning of solemnization. This was the view adopted by the law officers of the Crown on a question submitted to them on the suggestion of Sir John Macdonald. (Doutre, Const. of Can., p. 238.)

The other example is where the two powers can co-exist. The power of raising money by any system of taxation for Dominion objects does not directly or necessarily clash with direct taxation, or the imposing of taxes by way of license for the purpose of raising a revenue for local, provincial or municipal purposes.

The next question which the opinion discusses is the meaning of "Property and civil rights in the Province." It seems it was contended in the Privy Council that "civil rights" meant status. This pretention is of Downing street growth. Owing probably to the sterility of the colonial imagination, it did not bud here. Their Lordships, however, at once repudiate this interpretation. "They find no sufficient reason in the language itself, nor in the other parts of the act, for giving so narrow an interpretation of the words 'civil rights.'" And they proceed to demolish the heresy of the appellants with a vigour and a thoroughness which leaves nothing to be desired. It is well to preserve unimpaired those few conquests of science, of which we are perfectly assured. Indeed, without being taxed with an over zeal in determining the general meaning of the Confederation Act, their Lordships might have gone even further, and have said, that if there was anything the words "civil rights" in section 92 did *not* particularly mean, it was personal status. What they obviously mean are all those rights derived from the civil law not embraced in the word "property," subject, be it always understood, to the modifications of the enumeration of section 91.

The opinion next proceeds to deal with the question of trade and commerce. Their Lordships avoid deciding whether the business of insurance against fire be "a trade"; but they deal with the general scope of the words "regu-

lation of trade and commerce." On this point they are most explicit. They say:

"The words 'regulation of trade and commerce,' in their unlimited sense are sufficiently wide if uncontrolled by the context and other parts of the act, to include every regulation of trade ranging from political arrangements, in regard to trade with foreign governments, requiring the sanction of Parliament, down to minute rules for regulating particular trades. But a consideration of the act shows that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the Legislature when conferring this power on the Dominion Parliament. If the words had been intended to have the full scope, of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in section 91 would have been unnecessary; as 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency. 'Regulation of trade and commerce' may have been used in some such sense as the words 'regulations of trade' in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have been used in other acts of state. Article V. of the Act of Union, enacted that all the subjects of the United Kingdom should have 'full freedom and intercourse of trade and navigation' to and from all places in the United Kingdom and the Colonies; and article VI. enacted that all parts of the United Kingdom from and after the union should be under the same 'prohibitions, restrictions, and regulations of trade.' Parliament has at various times since the union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the articles of union. Thus the acts for the sale of intoxicating liquors notoriously vary in the two Kingdoms. So with regard to acts relating to bankruptcy, and various other matters."

This view supports fully the judgment of the Court of Queen's Bench, at the last term at Quebec, maintaining that of Chief Justice Meredith, in the case of *Poulin & The Corporation of Quebec*. It was held in that case that a local act, regulating the times at which saloons and taverns should be open for the sale of intoxicating liquors, was within the powers of a Local Legislature, being a mere matter of municipal police regulation, and that it was not an interference with the Dominion power to regulate trade and commerce.

The allusion to the case of *L'Union St. Jacques & Belisle* calls for what may be considered a digression. Before the courts here it was argued as being an interference with the powers of the Dominion to deal with bankruptcy and insolvency. Nakedly so considered the decision of the courts here was correct. There can be no question that the act to relieve the insolvent appellant was equivalent to an insolvent act, within our meaning of insolvency; and when Lord Selborne said, that an act which relieved the association from paying its debts, because obliging it to pay its debts meant ruin, "does not prove that it was in any legal sense in the category of insolvency," he was either drawing his ideas of insolvency from a system of law very different from ours, or that the word had a special meaning in the B. N. A. Act, or he meant that the law might possibly have given a false reason for its enactment. According to our law, the incapacity to pay one's debts is the test of *déconfiture*. Where the legal sense of insolvency is other than the incapacity to pay one's debts, the legal sense must have departed curiously from the normal signification of the word. In the B. N. A. Act insolvency is used to extend bankruptcy. The latter is the condition which the law creates, under certain circumstances for certain classes of persons who are or appear to be insolvent. Bankruptcy is a creation of positive law. Insolvency, on the other hand, results from the general principles of jurisprudence. But in the Privy Council a distinction was made which had not been adverted to here, and one that seems to be founded on unanswerable reasoning. It is said, that the Dominion Parliament not having exercised the power of legislating as to the insolvency of an association like l'Union St. Jacques, it remained subject to the civil law, and consequently to the operation of any modification of the civil law by local legislation. In this case when before the Supreme Court, referring to the case of *L'Union St. Jacques & Belisle*, Mr. Justice Fournier puts the point very clearly. He says: "In order to reconcile the exercise of these

powers, I have arrived at the conclusion, in a case such as the one now under consideration, that the Provincial jurisdiction is only limited by the exercise of the Federal Parliament of its power, in so far as the latter is competent to exercise it, and that the Province can still exercise its power over that portion of the subject matter over which it has jurisdiction, provided the Provincial legislation does not directly conflict with the Federal legislation." (Doutre, Const. of Can., p. 293)

We must, however, be careful not to press this rule too far. It is only applicable when the power sought to be enforced is of a special character, impinging on another power of a general character. It is a corollary of the principle alluded to in an earlier part of this paper; namely, that the very special power will absorb of the general so much as is necessary for the existence of the special power. It has therefore no bearing on this case. If it be an interference with the regulation of trade and commerce, it is *ultra vires*, whether the Dominion Parliament has specially legislated on the matter or not. For instance, suppose the Legislature of Quebec put an embargo on sea-going ships sailing from the St. Lawrence loaded with grain, that would be plainly *ultra vires* as an interference with trade and commerce, and with shipping, although both ships and wheat are subjects of civil rights. The answer to Mr. Justice Taschereau's dilemma is not the clearest portion of the decision. The dilemma only affected the Citizens Insurance Company. It was to this effect. The Company is created or now exists by a Dominion act. If insurance be the subject of local legislation the corporation cannot be created by a Dominion act, and therefore it should be declared that the defendant has no legal existence. The answer is—this is to confound the power to create with the civil rights of your "Frankenstein" after he is created. Local Legislatures may only have a right to create corporations with local objects,—an insurance company may or it may not be a corporation of this kind,—but it may be that they have the power to deal with the rights of corporations duly created by another power.

Through all this there is looming up a possible question of the Dominion power to incorporate insurance companies at all. There is a decision in the *Queen & Mohr*, the full consequences of which may not yet be fully appreciated. It may, perhaps, work more ways than one, and we would conclude by saying—*Caveat legum-lator.*

R.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[In Chambers.]

Montreal, December, 1881.

Before Ramsay, J.

Ex parte Norman McIntosh, petr. for writ of Habeas Corpus.

Commitment—Error of date—Omission in conviction.

1. *A commitment, setting out a conviction "for that the prisoner unlawfully did commit an aggravated assault" (omitting the word "maliciously"), is sufficient.*
2. *A typographical error in the date of a commitment, contradicted by the body of the document, does not invalidate the commitment.*
3. *Uncertainty of date in the commitment is not material where the date of sentence is apparent from the commitment and the record thereof brought before the Court or Judge hearing the application for Habeas Corpus.*
4. *The omission to state in the conviction that the prisoner was convicted on his plea of guilty, though very irregular, is nevertheless not fatal, where the record is before the Court and shows that the prisoner pleaded guilty.*

Ramsay, J. The prisoner is confined in the common gaol of this District under a conviction for an aggravated assault. This conviction purports to have been rendered under the provisions of the Act for the summary administration of criminal justice in certain cases, 32 & 33 Vic. cap. 32, sect. 2, s. s. 3. The circumstances are somewhat peculiar. The assault, it is alleged, was committed on the 30th January, 1880. The prisoner was arrested and brought before the magistrate on the 5th March, 1880. He consented to be tried under the summary trial by consent act, just mentioned, and he pleaded guilty, as appears by the record of the conviction, which was brought up at the time of the return of the writ. The magistrate suspended sentence *sine die*, and admitted the prisoner to bail on his own recognizance. It appears prisoner was arrested for drunkenness on the 10th September, 1881,

and taken before the Recorder, and, I understand, the charge was dismissed, not so the prisoner. He was then taken in custody before the magistrate, before whom he had been charged with the aggravated assault, more than eighteen months before. At any rate, the record tells us that on the 10th September, 1881, he was before the magistrate, and that the proceedings were "(continued from 5th March, 1880)" and sentenced. The commitment, which is headed "10th September, 1881," sets forth that the prisoner was "duly convicted" "in open public court, on the oath of Isabella McIntosh and others," &c., "for that he the said Norman McIntosh, on the thirtieth day of January, in the year of our Lord one thousand eight hundred and eighty, at the city of Montreal aforesaid, in and upon one Isabella McIntosh, unlawfully did commit an aggravated assault by unlawfully and maliciously inflicting upon the said," &c. Then comes the usual order to the gaoler to receive the prisoner into his custody in the common gaol, "there to imprison him for the space of six calendar months, &c.,' "Given under my hand and seal, this tenth day of September, in the year of our Lord one thousand and eight hundred and eighty." The prisoner produced a copy of the conviction, and the original was also produced with the record. It sets up that on the tenth day of September, in the year of our Lord one thousand eight hundred and eighty-one, at, &c., N. McI. &c., "being charged before me, &c., Police Magistrate for the District of Montreal, and consenting to my deciding upon the charge summarily, is convicted before me, for that he said N. McI. on the thirtieth of January, in the year of our Lord one thousand eight hundred and eighty, (the word "one" being erased) at the city of Montreal aforesaid, in the District aforesaid", &c., setting up offence as in commitment, and for this the magistrate adjudged the prisoner to be imprisoned in the common gaol, at hard labour, for six calendar months, and the conviction is thus attested: "Given under my hand and seal, at the City of Montreal, the day, month and year above mentioned."

On the part of the petitioner it was contended, 1st, that the charge was bad, because it was said that assault was unlawful, and the word "maliciously" was left out in characterizing the assault; 2nd, that the commitment was dated on the 10th September, 1880; 3rd, that the conviction, if it had any date at all, there being two dates above mentioned, must be the last mentioned, that is the 30th January, 1880, months before his arrest or trial, if the erased word "one" is omitted, and that if the word "one" be read in, then the conviction is bad, as being for an offence subsequent to his arrest; and 4th, that the magistrate's jurisdiction did not fully appear, if he pleaded guilty, and that the commitment says he was convicted on the oath of Isabella McIntosh and others, whereas the record shows he was convicted on his own plea of guilty. On the part of the Crown, my attention was drawn to sec. 30, 32 and 33 Vic., c. 32, and to sec. 91, 32 and 33 Vic., c. 29, and also to the forms appended to the former of these Statutes.

Having the record before me, and it having been referred to, both on behalf of the prisoner and by the Crown, I do not hesitate to make use of it, although this is not the proper form of bringing up the contents of a record.

In the first place, I have not anything to do with the discretion of the magistrate. I have drawn the attention of the Attorney-General to the statement made as to what occurred, and which is not denied, and there is an entry which seems to support the pretension that this sentence was awarded under very peculiar circumstances. I refer to the entry, "continued from the 5th March, 1880." This is not the fact. Somehow or other, the prisoner was before the magistrate, how we don't know; but certainly it was not on a continuation of the proceedings from the 5th March, 1880. He ought to have been identified, either by his surrender or otherwise. But of this part of the proceedings he does not complain, and he admits by his petition that he is the party in question. With regard to the first objection on behalf of the prisoner, I think it unfounded. The charge pursues the language of the Statute in setting out the offence, and this is sufficient. The objection to the date of the commitment exists; it is dated 1880, instead of 1881. But this is clearly a typographical error, contradicted by the body of the document, and by the record which is before me. I therefore think the latter part of sec. 30 of the Act under which the magistrate was proceeding is applicable: "No warrant of commitment upon a conviction shall

be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same." The warrant of commitment sets up the conviction, and behind it there is a conviction which is not affected by this error, and therefore, in so far as regards this objection, it is good. With regard to the third objection, the strict rule of interpretation is to understand "the said date," among several dates, as being the last-mentioned date, and in this case the last-mentioned date is that where there is an erasure of the word "one." If we were to read "the said date" as meaning the last, neither the 30th January, 1880, nor the 30th January, 1881, would suit; the 30th January, 1880, was prior to his arrest, and the 30th January, 1881, prior to his sentence. But the conviction shows that the day and year above mentioned means first above mentioned, that is the 10th September, 1881, and the record of conviction supports this. But it is said that this lack of an uncertain date is of material importance, because it is from that date the punishment runs. It seems to me that sec. 91 of the Procedure in Criminal Cases Act meets this difficulty. It directs that the punishment runs from the sentence, and not from the day the magistrate signs the record of conviction; and it is perfectly clear, both from the commitment and the record, that the sentence was rendered on the 10th September, 1881. The other portion of the objection is more delicate. In the warrant of commitment it is declared that the prisoner was convicted on the oath of Isabella McIntosh and others, and the conviction itself simply says that he was convicted. This is the form A. of the Statute used for convictions upon oath of witnesses, and it therefore corresponds, in the legal sense, with the commitment. But both are untrue. The prisoner was convicted on his own plea of guilty, and no witnesses were examined. The complaint under oath is not evidence on the trial, and it could not justify a conviction. Now, if he was convicted on his own plea of guilty, form C. of the Act requires it should be so stated. Nevertheless, the record is before me, and I see that the fact is established that the prisoner pleaded guilty. The omission, then, is simply matter of form. I think, therefore, this is the proper occasion to apply the former portion of the sec. 30 already cited: "No conviction, sentence or proceeding under this act shall be quashed for want of form."

The order will therefore go, that the prisoner be remanded. At the same time, I may say that the proceedings are very irregular, and that it is not impossible that another view may be adopted than that I have taken. The prisoner will, however, have the advantage of testing this at an early date, if he be so advised.

D. E. Bowie, for Petitioner.

A. Ouimet, Q.C., for the Crown.

SUPERIOR COURT.

MONTREAL, Nov. 19, 1881.

Before PAPINEAU, J.

THE MOLSONS BANK v. THE ST. LAWRENCE & CHICAGO FORWARDING CO.

Bill of lading—Continued Contract.

Wheat was carried by schooner from a port in the United States to Kingston, Ont., under a bill of lading requiring its delivery there to the defendants, subject to the order of the shippers; and was accepted from the schooner, and a receipt therefor given on the duplicate of the bill of lading, and forwarded by the defendants to Montreal, and there delivered, without the order of the shippers, and without the surrender or presentation of the bill of lading.

Held, 1. *The defendants were liable to the plaintiff, the holder of the bill of lading bearing the endorsement of the shippers, for the value of the portion of the wheat mentioned in the bill of lading which was assigned to the plaintiff.*

2. *The assignment of a portion of the goods mentioned in a bill of lading is valid, more particularly when the assignee holds the bill of lading endorsed by the shippers, and offers to surrender it on delivery of the portion assigned.*

The plaintiffs alleged that on the 8th August, 1880, Reynolds Bros. shipped by Schooner "Falmouth," bound for Kingston, a cargo of 16,500 bushels of wheat to be carried to Portsmouth near Kingston, to be there delivered into the charge of the Company defendants, and thence carried by them to Montreal and delivered to the order of Reynolds Bros., with instructions to notify Crane & Baird, of Montreal, of the consignment, and of its arrival at the last mentioned place. That for the freight, L. D. Becker, master of the schooner, undertook to carry the wheat to Portsmouth and deliver it

there to defendants, and he signed a bill of lading, undertaking to transport and deliver the wheat to the address on the margin of the bill of lading, viz., to the order of Reynolds Bros., as follows:

"Order Reynolds Bros. Notify Crane & "Baird, Montreal, P. Q. Care St. Lawrence & "Chicago Forwarding Company at Portsmouth "harbor near Kingston, Lake Ontario."

The plaintiffs represented that this address meant that the cargo was to be delivered at Portsmouth to the care of defendants, to be by them carried to Montreal and delivered there to the order of Reynolds Bros, notifying Crane & Baird, however, of its arrival at Montreal. That Becker gave the original bill of lading to Reynolds Bros., and kept the duplicate himself; that Reynolds Bros. endorsed and delivered the original bill of lading to Crane & Baird, and they by endorsement ordered the defendants represented by their agent D. McPhee, to deliver to Beddall & Co., of Montreal, 15,500 bushels of wheat. The order is as follows:—

"D. McPhee. Deliver to Messrs. Beddall & "Co. or order 15,500 bushels of within cargo, "we paying all freight and charges. Crane & "Baird."

That Crane & Baird after having endorsed the original bill of lading delivered it to Beddall & Co., who thereby became legal owners of the 15,500 bushels of wheat. That by the custom of trade, when grain is thus consigned, under a bill of lading made in this way, it is the practice for the companies to whose care it is addressed, to carry it and deliver it at Montreal according to the terms of the bill of lading or the instructions of the master of the schooner who first took charge of it. That about the 15th September, 1880, Beddall & Co., being holders of the bill of lading, and proprietors of the 15,500 bushels of wheat, obtained from plaintiffs on the security of the bill of lading an advance of $16,275, and transferred the bill of lading to plaintiffs, authorizing them to sell the wheat in the event of Beddall & Co. failing to repay the advance to the Bank. That the "Falmouth" arrived at Portsmouth on the 8th September, and delivered its cargo to the defendants, who received it on the barge Mohawk, undertaking to deliver it at Montreal according to the bill of lading. That in delivering the wheat to defendants, Becker communicated to them the copy of the bill of lading, and they by their agent McFarlane received it and obliged themselves to deliver it at Montreal, by writing across the copy a receipt for the wheat, and undertaking to deliver it to the order of Reynolds Bros. That when the grain arrived at Montreal about Sept. 11, 1880, the defendants delivered it to persons unknown to plaintiffs, without requiring the production of the original bill of lading belonging to plaintiffs, and without the production of the copy or duplicate which remained in Becker's hands. The plaintiffs asked $20,000 as the value of the 15,500 bushels of wheat, in default of delivery.

The defence was that the defendants were not parties in any way to the bill of lading, but entered into a distinct agreement with Crane & Baird at Montreal. That the Falmouth arrived at Portsmouth, Sept. 6, 1880, and its cargo was put on board the Mohawk without delay. That another cargo consigned to Crane & Baird arrived at the same time, and 4,000 bushels were put on board the Mohawk and the balance carried to Montreal by the Alfred. That on the 11th Sept., 1880, on the arrival of these vessels at Montreal, their cargoes were transhipped by order of Crane & Baird, and on the 14th Sept., Crane & Baird endorsed the bill of lading in favor of Beddall & Co. for 15,500 bushels. That this endorsement being only for a part of the quantity mentioned in the bill of lading was invalid, and gave Beddall & Co. no right in the cargo. That plaintiffs, having been guilty of gross negligence in not notifying defendants after they knew of the arrival of the wheat at Montreal, should alone suffer by such negligence. That on 14th September, Crane & Baird gave to Beddall & Co. for the same 15,500 bushels an order dated 11th September addressed to defendants, to deliver them to Beddall & Co., and that in fact there were 15,486 bushels delivered. That these deliveries were made without giving up the original bill of lading of the Falmouth or any other. That, in fact, the plaintiffs were aware of the delivery of the grain to Beddall & Co., and had authorized them to ship it to Europe.

The plaintiffs by their special answer denied that they had any knowledge of the delivery of 11th September.

PER CURIAM. Serious irregularities have

occurred on both sides. We have a bill of lading made for a cargo of wheat by Reynolds Bros., according to which the cargo was to be delivered at Portsmouth to their order and to care of the company defendants, and notice was to be given to Crane & Baird at Montreal. There is nothing in this to show that the port of destination was really Montreal, nor that Crane & Baird are the consignees or owners, as the delivery was to be made to the order of Reynolds Bros. The bill of lading should state the place where the cargo is to be delivered. Strictly speaking, the legal effect of this bill of lading terminated at Kingston. There is no question of freight for any other place, nor that the cargo should go farther. The master of the Falmouth, therefore, fulfilled his contract by notifying Crane & Baird at Montreal, and by delivering the cargo to the company defendants at Portsmouth, and it is proved that he did all this. The defendants admit by their plea that they received the cargo at Portsmouth, and gave a receipt therefor to the master of the Falmouth on the duplicate of the bill of lading in the possession of the latter. Another bill of lading should then have been made for the transportation of the grain to Montreal. This was not done. It was taken to Montreal and delivered to Beddall & Co. on the order of Crane & Baird, without the production of either the original or duplicate. The question is whether there was a new and distinct contract at Portsmouth or the continuation of the first contract. The plaintiffs contend that the first contract was continued, while the defendants say a new contract was entered into with Crane & Baird at Montreal. The Court finds in the evidence a sufficient indication that the defendants, as well as the plaintiffs, understood that they were acting, not under a separate contract, but under a tacit or verbal contract which was the continuation of the contract appearing by the bill of lading. In fact, the defendants' agent admits that he was deceived by an order of Crane & Baird, presented by Beddall & Co., and on which he delivered the cargo without having the bill of lading, and consequently in ignorance of another order of Crane & Baird written on the bill of lading. The endorsement of Crane & Baird was not addressed to the defendants by name, but to D. McPhee, without mentioning that the latter was defendants' agent. The Bank on its side neglected for a long time to ask delivery from defendants. There has been remissness on both sides. The plaintiffs will have judgment for $16,275, the admitted value of the wheat, with costs, save costs of *enquête* which are divided.

As to the question of endorsement for a part only of the cargo, it does not seem to me to present any difficulty, seeing that the plaintiffs offered to surrender the bill of lading on delivery of the portion assigned to them.

Judgment for plaintiffs.

Abbott, Tait & Abbotts, for the plaintiffs.

S. Bethune, Q.C., Counsel.

Girouard & Wurtele, for defendants.

SUPERIOR COURT.

MONTREAL, December 24, 1881.

Before JOHNSON, J.

OUIMET v. ROBILLARD.

Prescription—Taxes made part of the rent.

The claim of the lessor against the lessee to recover taxes which are made a part of the rent by the lease, is prescribed by five years.

PER CURIAM. The question in this case is as to the amount due by the defendant for rent and taxes. He pleads that everything due before 1st May, 1876, is prescribed, and offers the balance, with costs.

The Court is of opinion that the defendant is right, and that his plea ought to be maintained. The rent is the price which the lessee agrees to pay for his occupation (Art. 1601, C. C.) The taxes, when they are made a part of the rent by the lease, are subject to the five years' prescription. (See art. 2250 C. C.) There was a case cited from the 21st L. C. Jurist, p. 300—the case of *Guy* v. *Normandeau*—where the defendant's plea of prescription as to taxes was overruled by Mr. Justice Belanger. I sent for the record, and found that it was not as lessee, but as co-proprietor, *i.e.*, as a *grevée de substitution*, that the party was there held liable. I still hold to my opinion that as between lessor and lessee, where it is agreed between them that the lessee is to pay so much, whatever the items—they all make up the rent which the landlord is to get from his tenant for the enjoyment of the thing leased. Judgment for $137.50, and costs as in an action for that amount not contested.

P. M. Durand for plaintiff.

The defendant in person.