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SUPREME COURT OF CANADA.

OTTAWA, June 12, 1890.

Nova Scotia.]

SPINNEY v. OCEAN MUTUAL INS. CO.

Marine insurance—Delay in prosecuting voyage —Deviation—Increase of risk.

The cargo of a coasting vessel was insured for a voyage from Pubnico, N.S., to Lunenburg and, or Halifax, the policy containing the usual clause allowing the vessel, in case of extremity, to put into and stay at any port or ports without prejudice to the insurance. The vessel sailed on December 15th, 1886, and on December 21st arrived off Shelburne harbour, and put in there for shelter. The next day she started again, but returned to the harbour, remaining until December 27th, when she went out and again returned. She did not attempt to sail again until January 3rd at midnight, and was driven back by a storm, and on January 4th she got out of the harbour, and there being a heavy sea, attempted to get back, but got on shore and was wrecked. In an action to recover the insurance, evidence was given by the shipmasters, and the log of a Government vessel cruising in the vicinity, that the vessel could have proceeded on her voyage several times during the stay in Shelburne, and it was shown that other vessels had put into Shelburne during the same time and had gone to sea again. The insurance company pleaded, among other pleas, barratry and deviation. The trial judge held that the conduct of the master of the insured vessel, there being no satisfactory explanation or excuse offered for his delay, amounted to barratry, and gave judgment for the defendants on that plea. The full Court, on appeal, held that barratry was not established, as it depended on the evidence of a witness to whom the trial judge attached no credit, but they sustained the verdict on the ground of deviation. On appeal to the Supreme Court of Canada:

Held, affirming the judgment of the Court below (21 N. S. Rep. 244), that there is an implied condition in a contract of marine insurance, not only that the voyage shall be accomplished in the ordinary track or course of navigation, but that it shall be commenced and completed with all reasonable and ordinary diligence; any unreasonable or unexcused delay, either in commencing or prosecuting the voyage, alters the risk and absolves the underwriter from liability for subsequent loss.

Held, also, that in case of deviation by delay, as in that of departure from the usual course of navigation, it is not necessary to show that the peril has been enhanced in order to avoid the policy.

Appeal dismissed with costs.

Henry, Q.C., and *Bingay*, for the appellants.
Borden, for the respondents.

OTTAWA, June 12, 1890.

Nova Scotia.]

FITZRANDOLPH v. MUTUAL RELIEF SOCIETY OF NOVA SCOTIA.

Life insurance—Application for policy—Reference to application in policy—Construction —Warranty—Mis-statement.

An application for membership in a mutual insurance society contained a declaration by the applicant warranting the truth of the answers to the questions, and of the statements in such application, and an agreement that if any of the same were not true, full and complete, the bond of membership issued thereon should be void.

Among the questions in the application was one requiring the applicant to answer "yes" or "no" as to whether he had ever had any of certain diseases named. The list of such diseases was printed in perpendicular columns, and opposite the disease, at the head of each column, the applicant wrote "no," and underneath it, opposite the other diseases named, placed marks like inverted commas.

On the trial of an action to recover the amount insured by a bond issued in pursuance of this application, it was found as a

fact that the applicant had had one of the diseases opposite which the said marks appeared. The bond issued purported to insure the applicant "in consideration of statements made in the application herefor," etc.

Held, affirming the judgment of the Supreme Court of Nova Scotia (21 N. S. Rep. 274), that the application was incorporated with the bond and made part of the contract for insurance, and that whether the applicant intended the mark opposite the disease which it was found he had had to mean "no," or intended it as an evasion of the question, the bond was void for breach of the warranty in the application.

Appeal dismissed with costs.

Borden, for the appellant.
Henry, Q.C., for the respondent.

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*COURT OF QUEEN'S BENCH—MONTREAL.**

Trustees—South Eastern Railway Company—43-44 Vict. (Q.) ch. 49—Cars sold to company before trustees took possession.

By the Act 43-44 Vict. (Q.) ch. 49, the South Eastern Railway Company were authorized to issue mortgage bonds to a certain amount, and to convey the railway franchise, rights and interest to trustees representing the bondholders. The trustees were empowered to take possession of the road in the event of default by the company to pay the bonds, or interest thereon for 90 days. It was also provided (by sect. 10) that neither the company nor the trustees should have power to cease running any portion of the road. The respondents sold cars to the company, after the execution of a trust deed in conformity with the statute above mentioned, but before the trustees took possession of the road for default by the company to pay interest on the bonds. The respondents first sued the company for the amount of their claim, and obtained judgment, and then brought the present action for the same causes against the trustees.

Held:—(Reversing the judgment of Mathieu, J.), 1. That the effect of the Act above mentioned, and of the deed executed in conformity therewith, was not to convey the possession of the road to the trustees from the date of such deed so as to constitute them pledgees; and the trustees were not liable for the price of cars necessary for operating the road, furnished before the time they assumed possession.

2. That although the cars for which payment was claimed in this case were furnished at a time when the railway company was in default to pay interest on bonds, and when the trustees might have taken possession under the terms of the Act, but neglected to do so, the company was not thereby constituted *negotiorum gestor* of the trustees, so as to render the trustees liable for the value of supplies necessary for the operation of the road, obtained by the company before the trustees took possession.—*Farwell & Ontario Car & Foundry Co.*, Tessier, Cross, Church, Bossé, Doherty, JJ.; (Tessier and Church, JJ., diss.), May 28, 1889.

City of Sherbrooke — Telephone company—31 Vict. (Q.) ch. 25—Arts. 752, 757, M. C.

Held:—(Affirming the judgment of Brooks, J., 12 Leg. News, 354), That letters patent issued by the lieutenant-governor in council, incorporating a telephone company, with power to carry on business in the province under the provisions of Sect. 8 of 31 Vict. ch. 25 (now R. S. Q. 4705), to wit, to construct and operate a line or lines of telephone through, under or along the sides of and across streets and highways of towns, cities, etc., in the province, provided that passage or traffic in said streets or highways shall not be impeded or interfered with by the location of the poles and wires of the company, do not confer on the telephone company the power to plant poles and carry wires along and across the streets of a city without first having obtained the permission of the city corporation in whom, by Arts. 752, 757 M. C., the ownership of the streets is vested.—*Sherbrooke Telephone Association & Corporation of City of Sherbrooke*, Dorion, C.J., Tessier, Baby, Bossé, Doherty, JJ., June 19, 1890.

* To appear in Montreal Law Reports, 6 Q. B.

Litigious right—Advocate—Promissory note—Art. 1485, C.C.

Held:—1. Where an advocate, in contravention of Art. 1485, C.C., becomes the buyer of a litigious right which falls under the jurisdiction of the Court in which he exercises his functions, his action for the recovery of such right will not be maintained.

2. Where an advocate takes a transfer of a note after maturity, knowing that payment thereof has been refused by the maker because no consideration was received, he will be deemed to be buying a litigious right.—*Bergevin & Masson*, June 19, 1890.

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*SUPERIOR COURT—MONTREAL.**

Inn-keeper—Lien of, upon the goods of guests—R. S. Q. 5820.

Held:—That the lien of a hotel-keeper on the baggage and effects of his guest, for the price of food and accommodation, extends to goods belonging to third persons, brought into the hotel by the guest with their permission express or implied.—*Marcuse* v. *Hogan*, Taschereau, J., March 5, 1890.

Prothonotary—Responsibility for loss of record.

Held:—1. That the summary jurisdiction of the courts over the officers of justice is exercised only when an officer is guilty of contempt or wilful neglect of duty.

2. That where a record disappears, or is lost, without any evidence of wilful neglect against the prothonotary, the latter is not punishable for contempt, the proper remedy of the party aggrieved by such loss being an action of damages.—*Bossière et al.* v. *Bickerdike*, Wurtele, J., June 19, 1890.

Légataires particuliers—Paiement des dettes—Fidéi-commissaire—Saisine.

Jugé:—1o. Que lorsque par testament une personne laisse tous ses biens à un fidéi-commissaire avec entr'autres obligations celle de les diviser ou de les léguer quand bon lui semblera à ses enfants, savoir, ceux du testateur, ou à l'un d'eux, par parts égales ou inégales, le fidéi-commissaire devant avoir en attendant la jouissance et la saisine de ces biens, les créanciers de la succession n'ont pas d'action contre les futurs héritiers, enfants du testateur, aussi longtemps que les biens n'ont pas été partagés ou légués par le fidéi-commissaire.—*Martin dit Ladouceur* v. *Lionais*, Davidson, J., 17 mars 1890.

Capias—Cautionnement—Renouvellement—Condition résolutoire—C. P. C. art. 828.

Jugé:—1o. Que lorsqu'une obligation est contractée sous la condition qu'un évènement n'arrivera pas dans un temps, cette condition est accomplie, lorsque ce temps est expiré sans que cet évènement soit arrivé;

2o. Que l'obligation consentie avec condition résolutoire, dans un temps déterminé devient une obligation sans condition, lors que le temps fixé est expiré sans l'avènement de la condition;

3o. Que lorsqu'un cautionnement est fourni, sous l'article 828 du C. C., et que le délai fixé pour le renouveler suivant les articles 824 et 825 du code est expiré sans que ce renouvellement soit fait, la Cour ne peut permettre que ce cautionnement soit donné; le délai dans ce cas n'étant pas un délai de procédure, mais formant partie d'une véritable convention, avec condition résolutoire, et qui est devenue pure et simple.—*Letang* v. *Renaud*, Mathieu, J., 21 mai 1890.

Sale by authority of justice—Sheriff's sale—Arts. 710, 1275, C. C. P.—Arts. 297, 298, 945, 993, 1484, 2207, 2232, 2251, 2254, 2258, C. C.—Substitution—Fraud—Nullity—Prescription.

Held:—1. The will in this case created a substitution in favor of plaintiff.

2. A sale of substituted property by authority of justice is null as regards the substitute who was not represented therein, where the authorization to sell was obtained by the tutrix fraudulently concealing the will creating the substitution (not yet open),

* To appear in Montreal Law Reports, 6 S. C.

and by also withholding information as to the assets and grossly overstating the debts of the succession.

3. A sale under judicial authorization is also null, where the property of a minor not represented by a tutor *ad hoc*, is sold to his tutrix through persons interposed who were merely *prête-noms*, and made no payments on account of the price.

4. The substitute may assert his claim to property so sold, even against a third party who has become the purchaser thereof at sheriff's sale under an execution issued against a person who held the property under title from the tutrix, such sale having taken place after the substitute became of age, but before the substitution was open.

5. The ten years' prescription in favor of a purchaser in good faith with title, runs against a substitute who is a minor, only from his majority.—*McGregor* v. *Canada Investment & Agency Co.*, Pagnuelo, J., May 30, 1890.

Contrat d'assurance—Agent—Assuré—Lien de droit—Défense en droit.

Jugé:—Qu'il n'y a pas de lien de droit entre un agent d'une compagnie d'assurance et une personne qui, par l'entremise de cet agent, prend une police d'assurance dans la compagnie; et qu'une action intentée par l'agent contre cet assuré qui ne paye pas ses primes, pour la part ou le profit que l'agent doit en retirer d'après ses arrangements avec la compagnie d'assurance, pourra être déboutée sur défense en droit.—*Daveluy* v. *Hénault*, Tait, J., 17 mai 1890.

Quo Warranto—Ordre du juge—Résidence du défendeur—Exception à la forme.

Jugé:—1o. Que dans un *Quo Warranto*, le défendeur étant désigné comme "conseiller de la municipalité de...." sans que son domicile ou sa résidence fût autrement indiqué, cette description est suffisante.

2o. Que lorsque l'ordre du juge ordonne au défendeur de comparaître devant un juge de la Cour Supérieure, et que le bref commande de comparaître devant la Cour Supérieure, cette irrégularité n'est pas assez matérielle pour faire annuler le bref.—*Gaudry* v. *Martel*, Davidson, J., 6 juin 1890.

Capias—Commerçant—Suspension de paiement—Affidavit.

Jugé:—Que pour qu'un *capias* puisse émaner contre un commerçant qui a cessé ses paiements, il faut une suspension générale de paiements, et non pas seulement le défaut de la part du commerçant de payer une certaine dette, surtout lorsque l'affidavit énonce que le défendeur a contesté devoir cette dette.—*Herman* v. *Lewis*, Wurtele, J., 16 juin 1890.

Cour du Recorder—Conviction—Coupable et acquitté en même temps—Certiorari.

Jugé:—Qu'une conviction par laquelle un accusé est trouvé coupable et est en même temps acquitté, est contradictoire, illégale, et peut être cassée sur *certiorari*.—*Cardinal* v. *Cité de Montréal*, Taschereau, J., 12 mai 1890.

Certiorari—Juridiction—Mal jugé.

Jugé:—Qu'il n'y a lieu à l'émanation et au maintien d'un bref de *certiorari* que lorsqu'il y a excès ou défaut de juridiction, ou lorsque la procédure contient de graves informalités et qu'il y a lieu de croire que justice n'a pas été rendue, mais ce bref ne peut être maintenu lorsque l'on se plaint que du mal jugé du juge.—*Valois* v. *Muir, & Desnoyers* Mathieu, J., 18 juin 1889.

Acte Electoral de Québec—Electeurs—Locataires Rôle d'évaluation—Location.

Jugé:—1o. Que pour être qualifiés comme électeurs parlementaires pour la province de Québec, d'après la loi électorale de Quebéc, 52 Vict., ch. 4, article 173, les locataires doivent jouir de biens immeubles, qui, par le rôle d'évaluation en force, sont évalués séparément à $200 au moins, dans les municipalités autres que les cités;

2o. Que les locataires pour être ainsi qualifiés doivent avoir loué à l'année et non au mois.—*Galipeau* v. *Corp. de la paroisse de la Pointe-aux-Trembles*, Wurtele, J., 22 mai 1890.

Promissory note—Fraud and want of consideration—Holder in good faith.

Held:—That where a promissory note has been obtained by fraud, and without any consideration received by the maker thereof, such note is absolutely void, and a third party, who has become the holder in good faith, is not entitled to recover the amount thereof from the maker. Moreover, in the present case, the note being received as collateral security, the holder was not entitled to recover without proof that his claim against the endorser was still in existence.—*Banque Jacques Cartier* v. *Leblanc*, de Lorimier, J., March 8, 1890.

Liste électorale de Québec—Qualification d'électeurs—Employés publics—Curé—Fils de propriétaire—Résidence—Vente pour taxe—Rôle d'évaluation—Preuve.

Jugé:—1o. Que des employés du Gouvernement qui travaillent pendant la saison de navigation et reçoivent $1.25 par jour, qui sont continués dans leur emploi d'année en année sans nouvel engagement, tombent sous la § 4 de l'article 186 de le Acte Electoral de Québec, et ne peuvent être mis sur la liste des électeurs;

2o Qu'un curé d'une paroisse qui occupe des biens-fonds donnés à la fabrique pour l'usage du culte, n'en est que l'administrateur et n'occupe ces biens qu'en sa qualité de curé, et comme tel, il ne peut être mis sur la liste des électeurs parlementaires sous l'Acte Electoral de Québec, l'occupation officielle *n'étant par celle exigeé par la loi*;

3o. Que le temps pendant lequel un fils de propriétaire doit avoir résidé avec son père, son beau-père, son grand-père, sa mère ou sa belle-mère est un an avant la date de la confection de la liste des électeurs;

4o. Qu'un fils de propriétaire qui travaille constamment en dehors de la municipalité, mais dont les absences sont moindres que six mois, qui n'a pas d'autre résidence que celle de son père et qui contribue à l'entretien de l'établissement de son père, est qualifié pour être mis sur la liste des électeurs;

5o. Que la vente d'un immeuble pour taxes municipales déqualifie le propriétaire sur lequel la vente est faite, comme électeur parlementaire de Québec, à partir de la vente, quoique cette dernière reste révocable par le retrait qu'en peut faire dans les deux ans l'ancien propriétaire; l'effet de la vente, par les articles 1004 et 1013 du code municipal étant de transporter immédiatement la propriété du lot vendu à l'acheteur;

6o. Qu'il ne peut être permis à un fils de propriétaire pour établir sa qualification de prouver que, depuis la confection du rôle d'évaluation, la propriété de son père, sur laquelle il veut se qualifier, a augmenté en valeur; dans ce cas le rôle d'évaluation seul fait foi de la valeur de l'immeuble.—*Brunet* v. *Corporation de Ste. Anne de Bellevue*, Wurtele, J., 26 mai 1890.

Mandat—Responsabilité—Vente.

Jugé:—Que lorsqu'un marchand vend, de bonne foi, à des personnes se présentant comme mandataires d'une société incorporée, des marchandises qu'il livre à cette dernière, et que celle-ci accepte, et que de plus, par son silence et par ses actes, elle donne des motifs raisonnables de croire que ces susdites personnes étaient réellement ses mandataires, ce marchand peut poursuivre directement la corporation pour le prix des choses vendues.—*Cassidy* v. *Montreal Fish and Game Club*, Taschereau, J., 1 juin 1889.

Capias—Vente à vil prix—Cession—Défaut de rendre compte—Contestation du bilan.

Jugé:—1o. Qu'il y a lieu à *capias* contre un débiteur qui dispose de ses meubles à vil prix, pour argent comptant, à la veille de faire cession de biens, et qui ne rend pas compte du produit;

2o. Que le droit qu'ont les créanciers de contester le bilan d'un failli ne leur enlève pas celui d'avoir recours à la voie du *capias*

s'il y a recel et dissipation frauduleuse de sa part.—*Létang* v. *Renaud*, Taschereau, J., 4 déc. 1889.

Capias—Assignment in trust—Acquiescence.

Held:—That where a creditor, by filing his claim with the trustee, has acquiesced in a voluntary assignment in trust made by his debtor for the benefit of his creditors, such creditor is estopped from demanding that the debtor shall make a judicial abandonment; and therefore is not entitled to obtain the issue of a writ of *capias* on the pretext that his debtor has refused to make a judicial abandonment.—*Boston Woven Hose Co.* v. *Fenwick*, Wurtele, J., June 23, 1890.

Exécution—Jour de retour—Vente subséquente—Nullité.

Jugé:—Que la vente judiciaire des biens meubles saisis ne peut se faire après le jour fixé pour le rapport du bref; et qu'une opposition afin d'annuler basée sur ce grief est bien fondeé.—*Brodeur* v. *Leblanc*, deLorimier, J., 2 oct. 1889.

Capias—Dommages—Règlement de la dette sans réserve.

Jugé:—Qu'un débiteur, arrêté sous *capias*, qui règle avec son créancier pour le montant réclamé par l'action, sans se réserver spécialement son recours en dommage contre son créancier pour fausse arrestation, ne peut plus subséquemment poursuivre le créancier pour dommage; le reçu accepté par le demandeur constituan un règlement final entre les parties.—*Desautels* v. *Filiatrault*, Jetté, J., 16 nov. 1889.

Cause sommaire—Action sur obligation.

Jugé:—Qu'une action en recouvrement du montant d'une obligation hypothécaire n'est pas une cause sommaire, sous l'article 387 du Code de Procédure Civile.—*Delorme* v. *Smart*, Wurtele, J., 22 mai 1890.

QUEEN'S BENCH DIVISION.

LONDON, March 27, 1890.

JONES v. PADGETT (24 Q. B. D. 650).

Contract to manufacture equal to sample—Latent defect in sample—Implied warranty of merchantableness.

The plaintiff carried on the business of a woollen merchant and that of a tailor. The defendants, woollen manufacturers, contracted with the plaintiff as a woollen merchant to manufacture and supply to him indigo blue cloth according to sample. The plaintiff intended to use the cloth in his tailor's business for the purpose of making it into servants' liveries; but neither the fact that the plaintiff was a tailor nor that he intended to use the cloth for liveries was known to the defendants. There was evidence that one of the ordinary uses to which that particular kind of cloth was applied was the making of liveries. The defendants supplied to the plaintiff cloth which corresponded with the sample; but the sample, owing to a latent defect, was unsuited for the purpose of being made into liveries, though there was no evidence that it was unsuitable for other purposes for which cloth of that description was frequently used. The plaintiff having brought an action against the defendants for breach of an implied warranty of merchantableness, the judge left to the jury the question whether the cloth was merchantable as supplied to woollen merchants, and refused to leave to them the question whether an ordinary and usual use of cloth of that description was the making of it into liveries. Held, that the judge was right in refusing to leave the latter question to the jury, and that there was no misdirection.

Appeal from the Westminster County Court. The plaintiff carried on the business of a woollen merchant at one address, and of a tailor at another. As a woollen merchant, he ordered of the defendants, who were woollen manufacturers, a quantity of "indigo blue cloth," to be made according to sample. He intended to use the cloth in his business as a tailor for the purpose of making it into servants' liveries; but the fact that he was a tailor as well as a woollen merchant was

unknown to the defendants, and he did not communicate to them the particular purpose for which he wanted the cloth. The defendants made and supplied to the plaintiff cloth which was of the description ordered, and which corresponded with the sample. The plaintiff made the cloth into liveries which he supplied to a London club for the use of its servants. After the liveries had been in use for a few weeks, they showed signs of wear, the surface of the cloth came off, and the dye came out. It was admitted that the cloth was not strong enough in texture for the hard usage to which servants' liveries are subjected, and that it was altogether unsuitable for that purpose. There was evidence that one of the ordinary uses to which indigo blue cloth was applied was the making of servants' liveries, though it was also frequently used for other purposes, such as carriage linings, caps and boots. There was no evidence that the cloth supplied by the defendants was unsuitable for these latter purposes. Before ordering the cloth the plaintiff subjected the sample to the ordinary tests for the purpose of ascertaining whether it was suitable for liveries, and failed to discover that it was not so. The plaintiff having sued the defendants for breach of an implied warranty that the cloth was merchantable, the judge left to the jury the question whether it was merchantable as supplied to woollen merchants, and refused to leave to them the question whether an ordinary and usual use of cloth of the description ordered was the making of it into liveries. The verdict having passed for the defendants, the plaintiff moved for a new trial on the ground of misdirection.

Lord Coleridge, C. J. I am of opinion that in this case the direction of the County Court judge to the jury was right, and that there was not any such non-direction as made his direction amount to a misdirection. There is no doubt that if a manufacturer sells an article which he knows is bought for a particular purpose, he impliedly warrants that it is fit for that particular purpose. That is a principle which was established some sixty years ago in the case of *Jones* v. *Bright*, 5 Bing. 533, and has been acted upon ever since. But the present case is not within that rule, because nothing was mentioned to the seller as to the particular purpose for which this cloth was bought, and there was nothing to fix him with knowledge of that purpose. Here all that was shown was that the seller on the one side was a manufacturer, and the buyer on the other side was a woollen merchant. No doubt it was possible that the buyer might sell the goods to some person or other who might use them for a purpose for which they were not fit, and I may assume that the goods here were unfit for the particular purpose to which the plaintiff applied them. But there was nothing, beyond the position of the parties, to show that the seller knew the specific purpose for which they were bought, and it could not be denied that they might have been used for a variety of other purposes for which they were fitted. The plaintiff might have sold them to be used for purposes for which they were applicable. But then it is said that the case of *Drummond* v. *Van Ingen*, 12 App. Cas. 284, in the House of Lords, carries the law farther than *Jones* v. *Bright*, 5 Bing. 533. In my opinion that is not so. There was no intention on the part of the Lords to extend the old rule. Lord Macnaghten expressly said that he did not go beyond it; so also did Lord Selborne. And Lord Herschell, on whose judgment special reliance has been placed, was particularly careful to explain that he did not intend to carry the doctrine farther. He said: "It was urged for the appellants by the attorney-general, in his able argument at the bar, that it would be unreasonable to require that a manufacturer should be cognizant of all the purposes to which the article he manufactured might be applied, and that he should be acquainted with all the trades in which it may be used. I agree. Where the article may be used as one of the elements in a variety of other manufactures, I think it may be too much to impute to the maker of this common article a knowledge of the details of every manufacture into which it may enter in combination with other materials." If the plaintiff is to succeed, it must be on the ground of the reasonableness of imputing such knowledge to the manufacturer. I do not see that there was any evidence that the making of liveries was the only purpose, or even the most usual purpose, for which this particular kind of cloth was ordinarily used, and unless that is so there is nothing to fix the manufacturer with knowledge which would bring the case within the rule.

Lord Esher, M. R. The question which was left by the judge to the jury, and the sufficiency of which is now complained of, was whether the cloth supplied by the defendants to the plaintiff was merchantable as supplied to woollen merchants. The cloth in question was ordered under a particular name, namely, "indigo blue cloth," by a woollen merchant of a woollen cloth manufacturer, to be made according to sample. It was not denied that the cloth supplied answered the name, nor was it disputed that it agreed with the sample. But it was said that there was a breach of an implied warranty that it should be fit for the particular purpose of being made into liveries. Now the rule with regard to the implied warranty of fitness which arises in the case of a sale of goods is that which is laid down in *Jones* v. *Just*, L. R., 3 Q. B. 197, in the fourth of the five classes of cases there enumerated:

"Where a manufacturer or a dealer contracts to supply an article which he manufactures or produces, or in which he deals, to be applied to a particular purpose, so that the buyer necessarily trusts to the judgment or skill of the manufacturer or dealer, there is in that case an implied term or warranty that it shall be reasonably fit for the purpose to which it is to be applied." Those are the limits of the warranty. Here the goods were ordered by a woollen merchant. He no doubt happened also to be a tailor; but that fact was unknown to the defendant. The purpose for which a woollen merchant buys cloth is to sell it again to others. There was indeed evidence that such cloth as this, if sold to a tailor, was not fit for one of the purposes to which a tailor might apply it. But there was no evidence that it was not fit for other of the purposes even of a tailor. Moreover, the cloth might have been sold by woollen merchants to fifty other classes of persons besides tailors. There was no evidence that wool manufacturers know that woollen merchants sell to tailors at all. The manufacturer here was not told, either expressly or by implication, that the goods were ordered that they might be sold to tailors. Then is there any authority which establishes that where goods are ordered by a woollen merchant of a cloth manufacturer the latter must be taken to know that they may be ordered to be sold to tailors? The case referred to in the House of Lords is no authority for such a proposition, for there the goods were ordered under the designation of "coatings," which necessarily imported that they were intended to be made up into coats, and therefore the facts of that case came within the precise terms of the fourth rule in *Jones* v. *Just*, L. R., 3 Q. B. 197. It is suggested that every wool manufacturer is bound to know all the ordinary purposes to which a woollen merchant may put the cloth which he buys —that is to say, he is bound to be acquainted with all the trades to which the woollen merchant may re-sell it; but that is the very proposition which Lord Herschell expressly denies. "It would be unreasonable," he says, "to require that a manufacturer should be cognizant of all the purposes to which the article he manufactures might be applied, and that he should be acquainted with all the trades in which it may be used." Though he adds that "there seems nothing unreasonable in expecting that the maker of 'coatings' should know that they are to be turned into coats." And Lord Selborne says, that although, "if the goods being of a class known and understood, between merchant and manufacturer, as in demand for a particular trade or business, and being ordered with a view to that market, are found to have in them, when supplied, a defect practically new, not disclosed by the samples, but depending on the method of manufacture, which renders them unfit for the market for which they were intended," the doctrine of implied warranty applies; yet that doctrine "ought not to be unreasonably extended, so as to require manufacturers to be conversant with all the specialties of all trades and businesses which they do not carry on, but for the purposes of which goods may be ordered from them." The Lords decided that case on the ground that it came within the fourth proposition in *Jones* v. *Just*, L. R., 3 Q. B. 197, which proposition they held to be applicable to a case in which the goods were bought by sample. But here there is no evidence to bring the case within that proposition. The direction of the County Court judge was right, and this appeal must be dismissed.

Appeal dismissed.

INSOLVENT NOTICES, ETC.

Quebec Official Gazette, July 19.

Judicial Abandonment.

Eugène Corriveau, jeweller, Quebec, July 16.

Curators appointed.

Re Jacob Bouchard & Co., manufacturers and lumber-dealers.—P. Baudoin, St. John, curator.

Re Alphonse Levert, jr.—J. M. Marcotte, Montreal, curator, July 11.

Re Narcisse Turgeon.—J. Goulet, Levis, curator, July 11.

Dividends.

Re Beauchemin & Frère.—First and Final dividend, payable Aug. 9, C. A. Sylvestre, Nicolet, curator.

Re Ferdinand Bégin, Lévis.—Dividend, payable Aug. 4, C. J. Labrie, Lévis, curator.

Re E. E. Bouchard, trader, St. Etienne de Bolton.—First and final dividend, payable Aug. 11, W. J. Breggs, curator.

Re Wm. Bouchard, trader, Chicoutimi.—First and final dividend, payable Aug. 4, H. A. Bedard, Quebec, curator.

Re Charles J. McGrail, grocer, Montreal.—First and final dividend, payable July 31, N. P. Martin, Montreal, curator.

Re Alexis Paquet, trader, St. Ulric.—Second and final dividend, payable Aug. 4, H. A. Bedard, Quebec, curator.

Separation as to property.

Hortense Beauchesne vs. Joseph Poisson, trader, parish of St. Pierre les Becquets, district of Three Rivers, July 18.

Lina Coache vs. Joseph Hébert, tinsmith and trader, St. Hyacinthe, July 14.