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AGENCY—LIABILITY OF AGENT FOR CONTRACT IN HIS OWN NAME FOR PRINCIPAL.

ENGLISH HIGH COURT OF JUSTICE, EXCHEQUER DIVISION, FEBRUARY 27, 1879.

OGDEN v. HALL.

The defendant, an ironfounder and machinist at Bury, having set up some mill machinery at Roanne, in France, for a French mill-owner there, was requested by him to engage an overlooker to manage the machinery, and accordingly, on the 7th of December, 1876, a written agreement was drawn up and signed by the defendant and plaintiff, at Bury, in the following terms: "I hereby agree, on behalf of M. B. P., Roanne, France, to engage Mr. Amos Ogden (the plaintiff), overlooker, at the rate of 4*l.* per week, with travelling expenses there and back. The sum of 30*s.* per week to be paid to his wife every fourteen days. (Signed) Robert Hall, (the defendant) per J. H. Hall, Amos Ogden," Thereupon the plaintiff proceeded to Roanne, receiving 10*l.* at starting from the defendant, and entered on his duties as overlooker at the mill there, and continued there in that capacity till the middle of October, 1877, when, in consequence of a misunderstanding with M. B. P., the French mill-owner, he left and returned to England. During the plaintiff's stay in France the 30*s.* was paid to his wife every fortnight by the defendant at Bury, and upon his leaving France a sum of 12*l.* was paid to him by the defendant's agent at Roanne to enable him to return to England. The remainder of his wages under the contract, except a balance of some 17*l.*, was regularly paid to him from time to time by the French mill-owner. For this balance he now sued the defendant.

Held (*dissentiente* Kelly, C. B.), by Huddleston and Pollock, BB., giving judgment for the defendant, that the case was governed by the decision of the Court of Appeal in *Gadd* v. *Houghton*, 35 L.T. Rep. (N. S.) 222; L. Rep., 1 Ex. Div. 357; 46 L. J. Ex. 71, there being no distinction between the words "on account of" in that case, and "on behalf of" in the present one; and that these words being in the body of the contract it was immaterial that the defendant signed the document in his own name without qualification, and he did not thereby render himself personally liable.

The plaintiff in this action sued the defendant in the Salford Hundred Court for moneys payable to him by the defendant for work and services done and rendered by the plaintiff as the hired servant of the defendant, and otherwise for the defendant, at his request, and for wages due to the plaintiff in respect thereof, and for travelling and other expenses paid and disbursed by the plaintiff during such service, and for money due on accounts stated.

The facts of the case were, that the plaintiff was an overlooker in a mill, and the defendant an ironfounder and machinist at Bury, and that in the latter part of the year 1876 the defendant set up some machinery at a mill at Roanne, in France, for M. Beluze Pottier, and that after it was set up Beluze Pottier requested the defendant to engage some person to act as an overlooker and to manage the machinery for him at his mill at Roanne. Accordingly on the 7th of December, 1876, the defendant engaged the plaintiff upon the terms contained in the following agreement:

HOPE FOUNDRY, Bury, *Dec.* 7, 1876.

I hereby agree, on behalf of M. Beluze Pottier, Roanne, Loire, France, to engage Mr. Amos Ogden, overlooker, at the rate of 4*l.* per week, with travelling expenses there and back. The sum of 1*l.* 10*s.* per week to be paid to his wife every fourteen days.

(Signed) ROBERT HALL,
Per JOHN HALL.

(Signed) AMOS OGDEN.

The verdict was entered for the plaintiff, leave to move being given. The question was whether the defendant was personally liable.

R. H. Collins having obtained a rule.

Crompton, for plaintiff, showed cause, citing and referring to *Gadd* v. *Houghton*, 35 L. T. Rep. (N. S.) 228; L. Rep., 1 Ex. Div. 357; 4 L. J. 71 Ex.; *Parker* v. *Winlow*, 7 E. & B. 942, p. 947; 27 L. J. 49, Q. B., note to *Thomson* v. *Davenport*, 2 Sm. L. C. (6th ed.) 438, 7th ed. 384; *Tanner* v. *Christian*, 4 E. & B. 591; 24 L. J. 91, Q. B.; *Paice* v. *Walker*, 22 L. T. Rep. (N. S.) 547; L. Rep., 5 Ex. 173; 39 L. J. 109, Ex.; *Lennard* v. *Robinson*, 5 Ell. & B. 125; 24 L. J. 275, Q. B.; *Deslandes* v. *Gregory*, 2 L. T. Rep. (N. S.) 634; 2 El. & El. 602; 30 L. J. 36, Q. B.

R. Henn Collins, for defendant, *contra*, cited *Gadd* v. *Houghton*, *supra*; *Armstrong* v. *Stokes*, 26 L. T. Rep. (N. S.) 872; L. Rep., 7 Q. B. 598; *Southwell* v. *Bowditch*, 34 L. T. Rep. (N. S.) 133; L. Rep., 1 C. P. Div. 100, 374; 45 L. J. 374, 630, Q. B.

HUDDLESTON, B. The whole question turns upon the way in which the instrument in question, the contract in fact between the parties in this case, is to be construed. It is in the following terms: "I hereby agree, on behalf of Mons. Beluze Pottier, Roanne, Loire, France, to engage Amos Ogden, overlooker, at the rate of 4*l* per week, with travelling expenses there and back. The sum of 1*l*. 10*s*. per week to be paid to his wife every fourteen days," and this is signed, "Robert Hall, per John Hall." Now, in the notes to the case of *Thomson* v. *Davenport*, 3 SM. L. Cas. 438 (7th ed.), by Messrs. Henn Collins and Arbuthnot, p. 374, in the 6th ed., it is said: "In all these cases the question, whether the person actually signing is to be deemed to be contracting personally or as agent only, depends upon the intention of the parties, as discoverable from the contract itself; and it may be laid down as a general rule, that, where a person signs a contract in his own name without qualification, he is *prima facie* to be deemed to be a person contracting personally; and in order to prevent this liability from attaching, it must be apparent from the other portions of the document that he did not intend to bind himself as principal." Now here, the defendant signed this document in his own name without any qualification, and *prima facie* therefore he "contracted personally." But then comes the question whether or not there are any words in any other portion of the document which show that the defendant, though he signed the instrument without qualification in his own name, "did not intend to bind himself as principal," and we find that at the very commencement of the instrument it is stated that he is entering into the agreement "on *behalf of*" another person. Now, what is the meaning of these words "On behalf of Mons. Beluze Pottier," etc.? If they are to be considered as words of description merely, as was done with regard to the words "As agent for John Schmidt and Co." in the case of *Paice* v. *Walker*, on which case the plaintiff's counsel has so strongly relied in the present case, then of course the plaintiff will succeed in establishing his claim against the defendant; but if, instead of being read as mere words of description, they are held to be words indicating the capacity in which the defendant made and signed the contract, namely, that he made it "on behalf of" or "as agent for" Mons. Beluze Pottier, they would then, in my opinion, be words of the same import as the words "on account of" in the case of *Gadd* v. *Houghton*, in the Court of Appeal. In *Gadd* v. *Houghton* this court held that the defendants in that case were liable on the ground that, not having qualified their signature to the contract by words showing that they contracted as agents or brokers only for other persons, they must be taken to have contracted personally, and that the case was undistinguishable from that of *Paice* v. *Walker;* but the Court of Appeal overruled the decision of this court in *Gadd* v. *Houghton*, and held that the case was not governed by *Paice* v. *Walker;* that whatever might be the decision in that case upon the words "as agent for," yet the words "on account of" in *Gadd* v. *Houghton* were not at all ambiguous, and that it was impossible to make them words of description merely, and that the effect of them at the beginning or in the body of the contract had effect and operation throughout the whole document, including the signature, and that the addition of those words after the signature would not have added anything to what had been previously stated in the body of the instrument. Archibald, J., in his judgment in that case, said: "The usual way in which an agent contracts so as not to render himself personally liable, is by signing "as agent." That, however, is not the only way, because, if it is clear from the body of the contract that he contracts only as agent, he would save his liability. No words could be plainer than the words in the body of the contract here 'on account of Morand & Co.' to show that the defendants contracted only as agents;" and Quain, J., also expressed himself to the same effect. Now, I think that the words "on behalf of" in the body or at the beginning of the instrument of contract here are of the same import and to the same effect as the words "on account of" in *Gadd* v. *Houghton*, and show that the present defendant was contracting not on his own account and liability, but, "as agent" for Mons. Beluze Pottier. I can see no distinction or difference whatever between them, and that being so, the case of *Gadd* v. *Houghton* in the Court of Appeal is a conclusive authority in favor of the defendant, for whom, therefore, I am of opinion that the judgment ought to be entered.

POLLOCK, B. I am of the same opinion. Looking at the words of the contract in the present case, which are as follows [his Lordship here read the contract as set out in the case], I am certainly of opinion that the case is governed by the decision of the Court of Appeal in *Gadd* v. *Houghton*. That case was originally tried before me in Liverpool, where I held that the defendants were not liable; and when the case came before this court on a rule for a new trial, the court seemed to think that the case was governed by the decision in *Paice* v. *Walker*, and that the words "on account of" occurring only in the body of the contract, and the contract itself being signed by the defendants in their own name without qualification, there was nothing to show the *prima facie* liability of the defendants as having contracted personally; and accordingly my ruling at *nisi prius* was overruled. But when the case came before the Court of Appeal, that court overruled the decision of this court upon that point and held that the case was not governed by *Paice* v. *Walker*, between which case and that of *Gadd* v. *Houghton* they established a clear distinction. But then Mr. Crompton, on the part of the present plaintiff, has urged and relied strongly upon the fact of the sum of 1*l*. 10*s*. a week being paid to the plaintiff's wife by the defendant—payment which he says was by the terms of the contract expressly agreed to be made to the wife by the defendant—as a circumstance showing or leading to the conclusion that the defendant is the party personally liable on this contract. But, in truth, the contract does not provide for the payment of that sum by the defendant. It states merely that the sum of 1*l*. 10*s*. per week is to be paid to the plaintiff's wife every fourteen days, and, although as a matter of fact, and presumably of convenience as between the parties, the defendant did pay this sum to the plaintiff's wife, the payment might very well have been made by the French principal, M. Beluze Pottier, by post-office order, or in various ways other than by the hands of the defendant. I am of opinion, as before mentioned, that the present case is governed by *Gadd* v. *Houghton* in the Appeal Court, and therefore it is unnecessary to say anything more than that I think our judgment should be in favor of the defendant.

KELLY, C. B., dissented.

Judgment for the defendant.

COURT OF REVIEW.

MONTREAL, April 30, 1879.

JOHNSON, TORRANCE, JETTÉ, JJ.

LARUE v. LORANGER et al.

[From S. C., Montreal.

Attorney's fees—Promise of extra compensation—Retainer.

The judgment brought up for review was rendered by Mackay, J.

JETTÉ, J., said that in this case the question was raised on a plea of compensation as to the right of an advocate to extra remuneration, which, it was alleged, his client had agreed to pay. It had been held that an advocate has no right of action for a retainer. But in the present case it was doubtful whether it could be pretended that the sum claimed was a retainer. A retainer has reference to services to be rendered. Here, on the contrary, it appeared to the Court that the compensation was promised for services already rendered, and not for services to be rendered. The lawyer told his client that the case was one of unusual difficulty, and the client told him to go on and he would be remunerated for his extra trouble. The client now pretended that he did not think more than $50 would be required for such extra work. The services rendered, however, were proved to be worth much more than that. One witness, who was perfectly acquainted with the case, valued them at $300, and another at $400. The attorney claimed only $200, and the Court was of the opinion that he had perfectly established his case. Judgment reversed, and tender declared sufficient.

JOHNSON, J., remarked that if there appeared to exist some confusion of principle in the different decisions of the Courts on this subject it arose from the different qualities in which the profession acted. If he considered that the sum in dispute here was a retainer, he would not give judgment for it at all, for a retainer must be paid beforehand, and could not be the subject of an action. But here was work proceeding, and a sum promised by a client to an attorney. The plaintiff's attorney said he could not go on without extra compensation, and the client answered, "go on, I will pay you handsomely." He says he understood by handsomely $50, but this sum was altogether inadequate to the services rendered. Judgment

would go in favor of the attorney, not for a retainer, but on the principle that the laborer is worthy of his hire. There was no doubt that in this country attorneys can maintain an action for work and labor done.

TORRANCE, J., differed from the majority on the right of the attorney to recover the extra fee claimed, but admitted that he was equitably entitled to extra compensation, as the case was just as disagreeable as it was possible for a professional gentleman to have in his hands.

The judgment is as follows :—

" La cour, etc....

" Considérant que le demandeur réclame des défendeurs une somme de $259.75, montant d'avances par lui faites aux défendeurs, ses procureurs et avocats dans une cause de Moreau, demandeur, contre Larue, (le présent demandeur) et un nommé Woods, la dite cause ci-devant pendante et instruite devant la cour supérieure et finalement decidée ensuite en appel par la Cour du Banc de la Reine, et que les défendeurs, reconnaissant devoir au demandeur la somme de $28.37, ont consigné cette somme avec leur plaidoyer, contestant en même temps la réclamation du demandeur pour le surplus, et alléguant que suivant le compte par eux rendu au demandeur et produit par ce dernier comme sa pièce B, cette balance est la seule qui lui soit due, attendu que les défendeurs, ainsi qu'il appert au dit compte, ont légitimement chargé au demandeur une somme de $200 comme retenue en la cause susdite, et qu'ils ont en conséquence, droit de garder et retenir la dite somme à ce titre ;

" Considérant qu'il est établi en preuve, tant par les réponses du demandeur examiné comme témoin, que par les autres témoins, que lui le dit demandeur est convenu avec les défendeurs de les rémunérer en sus de leurs frais ordinaires pour le trouble considérable que leur donnait la dite cause ; que cette promesse a été faite à plusieurs reprises, et que les défendeurs n'ont consenti à continuer de s'occuper de la dite cause que vû ces promesses réitérées du défendeur en la dite cause ;

" Considérant que les dites promesses ont été ainsi faites tant au moment même où les services des dits défendeurs étaient ainsi requis par le demandeur, qu'après tels services déjà rendus ;

" Considérant que la valeur de ces services est prouvée et établie au chiffre réclamé par les défendeurs ; que le demandeur n'a pas prouvé sa réclamation pour plus que le montant offert par les défendeurs, et que les offres de ces derniers sont en conséquence suffisantes ;

" Considérant en conséquence, qu'il y a erreur dans le jugement de la Cour Supérieure, etc.— Judgment reversed, and tender declared sufficient. (TORRANCE, J., dissenting).

Lareau & Co., for plaintiff.

Loranger & Co., for defendants.

JOHNSON, MACKAY, PAPINEAU, JJ.

TELLIER v. PAGÉ.

[From C. C., Joliette.

Privilege—Hypothec registered against immoveable attaches, though the property had previously been sold to third party who had not registered his title before the registration of the judgment.

The judgment brought under review was rendered by the Circuit Court, Joliette, OLIVIER, J., dismissing a hypothecary action, the grounds being as follows :—

" Considérant qu'il ressort des allégations mêmes de la déclaration du demandeur, ainsi que de l'acte de cession du 13 Janvier 1877, par Norbert Pagé au défendeur (Trefflé Pagé) produit par les parties, que l'immeuble décrit en la déclaration du demandeur n'appartenait plus au dit Norbert Pagé lors du prononcé du jugement du 3 Mars 1877, invoqué par le demandeur, non plus que lors de l'enregistrement d'icelui le 8 Mars 1877, et qu'ainsi le dit jugement ne pouvait créer une hypothèque en faveur du demandeur sur le dit immeuble, maintient la contestation du défendeur, et renvoie l'action du demandeur avec dépens," &c.

MACKAY, J. The question in this case was as to the preference to be accorded to a registered judicial hypothec as against a purchaser who had neglected to register. The judgment of the Court below found that Pagé, being in open possession, was not bound to register. The Court here unanimously held that the plaintiff's pretension was well founded, and his claim, which was based on a judgment against the vendor and duly registered, must take precedence of the defendant's title, which was not registered until a later date, though the judgment was not registered until after the sale to defendant. The judgment must be reversed.

Judgment :—

"Considering that plaintiff has proved his allegations material of declaration, and shown right, by his early registration of judgment, to the remedy he seeks against defendant, whose registration of his title deed was only performed late, long after the plaintiff's registration, and that the open possession invoked by defendant is of no use to him against plaintiff, doth declare and adjudge the immoveable property mentioned and described in the declaration in this cause as follows, to wit: (the description follows) to be charged and hypothecated in favor of plaintiff for the payment of the sum of $107.35, to wit, the sum of $102.25, amount of the judgment rendered in the Circuit Court of the district of Joliette, on the 3rd day of March, 1877, against one Norbert Pagé, of the parish of Ste. Mélanie, farmer, at the suit of Jean Tellier, plaintiff in this cause, said judgment duly enregistered in the registry office of the county of Joliette, together with a notice to the Registrar containing a description of certain immoveables belonging to said Norbert Pagé and comprising the above described land, which the said plaintiff intended should stand hypothecated for surety of the payment of the said judgment of the 3rd of March, 1877, with interest, &c., until paid, and the sum of $5.10 for cost of copies of deed and registration of the same;

"It is, therefore, considered and adjudged that the said defendant as *détenteur actuel* of the above described land, by means of the *acte de cession* thereof made to him by said Norbert Pagé, on the 13th day of January, 1877, do within fifteen days after service upon him of the present judgment, quit, abandon and give up the said land," &c.

L. A. McConville, for plaintiff.

Godin & Desrochers, for defendant.

SUPERIOR COURT.

MONTREAL, March 8, 1879.

LAFLAMME et al. v. DUBRULE.

Quantum meruit—Appreciation of work.

MACKAY, J., said that this was an action for $151, for work and labor, and materials. The plea offered $100, and alleged that plaintiff's charges were exorbitant. The case was sent to *experts*; both parties went into their case before the *experts*, and they declared that the plaintiff was entitled to $125, but they omitted to state for what cause. The report not having stated that the $125 was awarded in respect of the *quantum meruit*, was set aside, and the defendant fought on the case at *enquête*. This was the case of a man employed without any price being fixed. Under such circumstances, the person who got the work done could not cut the price down to the very lowest rate at which such work might be done by someone else. If a man went into a first-class tailor's shop, he must pay the first-class tailor's price. That was the law governing such cases. The defendant here offered $100, and one witness gave evidence that he would have done the work for less. This was not sufficient. The Court would allow a fair compensation, and would be influenced to some extent by the opinion of the *experts*, who had awarded $125. Judgment for plaintiff for $125 and costs.

A. Desjardins, for plaintiffs.

Duhamel & Co., for defendant.

WILKES v. BEAUDRY.

Insolvent—Trial of charges of fraud—Remarks on the expediency of jury trial in such cases.

MACKAY, J. The plaintiff's declaration charged the defendant with having, on three different occasions, made false statements of his affairs, and thereby lulled the plaintiff into confidence, and induced him to sell him goods which were not paid for. His Honor referred to the various statements of his affairs which had been produced by the defendant, and which had the effect of inducing the plaintiff to make farther advances. The conclusions were that the defendant be imprisoned under the Insolvent Act, unless a certain sum be paid. His Honor said that it was very much to be regretted that the duty of trying these criminal charges should be imposed on the Judges without the assistance of a jury. In England, where the judges used to have this duty laid upon them, they rebelled, and usually let off the persons accused, and so forced the Government into having jury trials. So it ought to be here. The duty was a very unpleasant one indeed. An argument might be made on it against the constitutionality of the Insolvent Act in taking

away trial by jury from bankrupts charged with crimes.

The plea denied the plaintiff's allegations. The evidence showed, however, that false representations were made. The plaintiff had established his case perfectly, except that he could only get judgment for $400.39, which was all that defendant had bought subsequent to the date of the false statement, 20th March, 1876. What degree of imprisonment should be ordered against a man under circumstances like these? It looked like a very bad case, undoubtedly, and the sentence of the Court must be the extreme one of the law. The imprisonment of the defendant for two years would be ordered, unless he repaid the sum of $400.39 and costs.

Coursol, Girouard, Wurtele & Sexton, for plaintiff.

Loranger & Co., for defendant.

MONTREAL, April 30, 1879.

OLIVIER et al. v. DEMONTIGNY.

Confession of Judgment—Costs.

JOHNSON, J. The action is for $109.59 on a note, and for goods sold. Plea, that on the amount of the note ($74 09) defendant has paid $51, leaving a balance of $23 09; that the interest is only $5.55, making in all $28.64, for which he offers to confess judgment. The plaintiffs accept this; therefore there is an end of the matter so far as the debt goes; but what as to the costs? The defendant evidently is entitled to no costs for merely acknowledging how much he owes, if by neglecting to pay his debt he compels the plaintiff to sue him: but here the plaintiff sued him for $80.95 more than he owed, and when he acknowleges a balance of $28 the plaintiff admits that to be the right amount. Therefore, he had no right of action in this Court at all, but only in the Circuit Court; and he also compelled the defendant to plead in order to avoid the risk of a judgment for $80 more than he owed. Therefore, the plaintiff must pay the costs of that plea, and will only himself get judgment for $28.64, with costs of the Circuit Court.

DeBellefeuille & Turgeon, for plaintiff.

Trudel, DeMontigny & Charbonneau, for defendants.

SUPERIOR COURT.

MONTREAL, Feb. 28, 1879.

ETHIER v. DANDURAND et al.

Jurisdiction — Saisie-Revendication — Assignees.— Domicile.

The plaintiff having issued a *saisie-revendication* at Montreal, against moveables in the possession of defendants, in their quality of assignees to the insolvent "La Compagnie de la brasserie de St. Lin," the defendants filed a declinatory exception, on the following grounds:—

1. "Parce qu'il appert par le bref d'assignation et la déclaration en cette cause que le demandeur ne s'est pas adressé au tribunal du domicile du failli "La Compagnie de la brasserie de St. Lin," savoir, au Juge siégeant en matière de faillite dans et pour le district de Joliette;

2. "Parce que cette Honorable Cour n'a point jurisdiction pour juger le mérite des prétentions du demandeur, vû que toutes les procédures et les documents de la faillite de la dite compagnie insolvable sont dans le dit district de Joliette;

3. "Parce que les défendeurs ès-qualités ne résident point dans le district de Montréal;

4. "Parce que la prétendue cause d'action du demandeur n'a pas originé dans ce district, mais bien dans le district de Joliette."

JETTÉ, J., held the exception to be well founded, the judgment being as follows:—

"La Cour, etc....

"Considérant que le demandeur a saisi-revendiqué entre les mains des défendeurs ès-qualité de syndics conjoints à la faillite de la compagnie de la brasserie de St. Lin, corps politique et incorporé, divers objets mobiliers décrits comme suit: 'Un wagon à spring, un autre wagon à 'deux chevaux, un petit wagon simple, quatre 'sleighs et une traîne, un lot de bois de corde, 'environ 150 cordes';

"Considérant que ces objets étaient lors de la dite saisie-revendication, en la possession des défendeurs ès-qualité à St. Lin, dans le district de Joliette, et dès lors sujets et soumis à la jurisdiction du tribunal du lieu de la situation;

"Considérant que la revendication, qu'elle ait pour objet un meuble ou un immeuble, est une action réelle, et qu'aux termes de l'article 38 du Code de Procédure Civile, tous les défendeurs en matière réelle doivent être assignés devant le tribunal du lieu où est situé l'objet en litige;

" Considérant en outre que les défendeurs ont allégué que le domicile de la faillie, " La Compagnie de la brasserie de St. Lin, à laquelle les défendeurs sont syndics, est à St. Lin, dans le district de Joliette ; que le demandeur n'a pas nié expressément cette allégation, mais y a répondu en invoquant un autre moyen, et que, par suite, aux termes de l'art. 144 du Code de Procédure Civile, cette allégation des défendeurs est censée admise ;

" Considérant que les défendeurs ès-qualité n'ont comme tels d'autre domicile légal que celui de l'être moral de la faillite auquel ils sont syndics, pour toutes les fins des demandes, qui peuvent être faites contre la dite faillite, et que le fait que le domicile personnel de l'un des dits syndics se trouve dans ce district ne peut être considéré comme attributif de juridiction au tribunal de tel domicile personnel quant aux matières concernant la dite faillite ;

" Maintient l'exception déclinatoire produite par les défendeurs et renvoie la dite action avec dépens," &c.

Prévost & Préfontaine, for plaintiff.

T. & C. C. de Lorimier, for defendants.

AMBROIS v. MALLEVAL.

Capias—Intent to defraud.

JETTÉ, J., said that this was a case in which a capias had been issued against the defendant on the ground that he was about to leave for Europe, and the plaintiff would be defrauded of his debt. It appeared, however, that the defendant was not about to leave immediately, and had no fraudulent intention in his proposed trip, which was for the purpose of visiting the Paris exhibition. It was established, moreover, that all his interests were here ; the capias must be quashed.

Roy & Boutillier, for plaintiff.

O. Augé, for defendant.

HAWKES v. CAFFREY.

Capias—Affidavit—Omission of word " immediately."

JETTÉ, J. This was another case in which a capias had issued, and was similar to the case of *Lighthall* v. *Caffrey*. The defendant petitioned to be liberated on various grounds, one of which was that it was not alleged in the affidavit that the defendant was "immediately" about to leave the Province. The averment was : " that deponent has reason to believe, and verily believes, that the defendant, to wit, the said James Caffrey, now temporarily in the city of Montreal, is about to leave the heretofore province of Canada." &c. The word " immediately" was left out. His Honor said that he acceded with some reluctance to the opinion of his brother judges on this point—that the word " immediately " was indispensable. The affidavit was, therefore, defective, and judgment must go, ordering the liberation of the defendant.

The judgment is as follows :—

" La Cour, etc....

" Considérant que l'affidavit sur lequel a été émis le dit bref est irrégulier et insuffisant, en autant qu'il ne contient pas l'allégation que le défendeur était sur le point de quitter immédiatement la province ;

" Accorde la dite requête, et casse et annule le dit bref de capias," &c.

Macmaster, Hall & Greenshields, for plaintiff.

Carter, Church & Chapleau, for defendant.

RECENT ENGLISH DECISIONS.

Judgment.—There was a controversy over an alleged infringement of a patent, and it was agreed that an expert should examine the lithographic stones in controversy in use by by the defendants, and he did so, and reported in favor of the defendants, and judgment was entered accordingly. Afterwards the plaintiffs brought an action to have it declared that the former judgment was obtained by fraud, alleging that the defendants had fraudulently concealed certain stones used by them from the expert, and had made certain false statements to him. *Held*, on the facts, that the fraud was not proved ; and *semble* that a judgment could not be attacked on such grounds.—*Flower* v. *Lloyd*, 10 Ch. D. 327.

Limitations, Statute of.—Defendant owed plaintiffs a large debt incurred in 1865, and in answer to a demand wrote them in May, 1874, as follows : " Believe me that I never lose sight of my obligations towards you, and that I shall be glad as soon as my position becomes somewhat better, to begin again and continue my instalments." It appeared that in 1874, defendant's position was bettered by £14, but was no better

in any other year. In September, 1876, he wrote again as follows: "Since the present year, I find myself in a more hopeful sphere which, as soon as the general commercial crisis gives way, will render to me more than necessary for a living." It did not appear that the "general commercial crisis" had, in fact, "given way." *Held*, that the claim was not saved by these letters from being barred.—*Meyerhoff* v. *Froehlich*, 4 C. P. D. 63.

Partnership.—Two women, C. and W., became partners in business in London, in 1875, under the firm name of C. & W. In 1877, C. married one L. In 1878, the partnership was dissolved, and it was ordered by the Court that "the said partnership business, and the leasehold premises, trade, fixtures, stock-in-trade, goodwill, and business be forthwith sold as a going concern" to the partner who should bid the highest. W. was the purchaser, and she afterwards carried on business under the old style. The deed of assignment contained the clause, "including the right to represent that the business as recently carried on by C. &. W. is now being carried on by the said W." *Held*, that W. could not be enjoined from using the old firm name; and per James, L. J., that the assignment conveyed the right to its use.—*Levy* v. *Walker*, 10 Ch. D. 436.

Right of Way.—By a public Act, a corporation was empowered to build a pier according to plans. It was alleged that, if the pier was built in the manner provided by the Act, a certain public right of way would be thereby rendered unavailable for public use. *Held*, that, if that were the case, the Act must be held to have extinguished the right of way by implication, though no reference was made to the matter in the Act.—*Corporation of Yarmouth* v. *Simmons*, 10 Ch. D. 518.

Sale.—A man brought pigs into market, and sold them with all faults and expressly without warranty. They turned out to have typhoid fever, and died on the purchaser's hands, and infected his other pigs. The acts of the seller amounted to a breach of a statute prohibiting such sale in market of infected animals, and inflicting a penalty. *Held*, that the existence of the Statute did not raise an implied representation that the pigs were sound, and the purchaser had no remedy.—*Ward* v. *Hobbs*, 4 App. Cas. 13; S.C. 2 Q.B.D. 331; 3 Q.B.D. 150.

GENERAL NOTES.

THE POWER OF THE MACE.—Rather an unusual circumstance took place in the Imperial House of Commons on Thursday 1st May, the result of which gives us a little insight into the value of that article of hitherto mythical influence, "The Speaker's mace." We learn from the *Globe* that Sir Julian Goldsmid, being chairman of a select committee of the House, and apparently disinclined to assist in "making a House" to facilitate the discussion of the Irish Saturday Closing Bill, Sir Julian was tempted to test the Speaker's authority. He, therefore, inquired of the Sergeant-at-Arms, who had summoned him, what would be the consequence of his refusing to come, and was puzzled by the Sergeant's intimation that in that case he would "have to return with the mace." All readers of Hatsell's *Precedents* are aware of the mysterious power the mace possesses for the transmutation of the Assembly to which it belongs. "When the mace lies *upon* the table it is a House; when *under*, it is a committee. When the mace is *out* of the House, no business can be done; when *from* the table, and upon the Sergeant's shoulder, the Speaker alone manages." So declared that excellent authority more than sixty years ago. But if, when the mace is out of the House, no business can be done in the House, it is nevertheless clear that much business can be accomplished at the spot to which the mace itself has gone. Mr. Brand reminded the Commons that "on the appearance of the mace in any committee, that committee is dissolved, of course." So that any committee refusing to come and make a House, when Mr. Speaker wants to take the chair and get to business, does so upon pain of instant extinction. Speaker Abbott, whose manuscript book on the usage of the House was quoted by Mr. Brand in support of this employment of the mace, had opportunities of knowing the limits of his office. In 1806, he gave that famous casting vote which condemned Lord Melville for misconduct as Treasurer of the Navy, and inflicted on Mr. Pitt the defeat which has been said to have hastened his death; and it was he who, in 1823, called upon Canning to retract the charge of falsehood he had hurled at Brougham on the memorable occasion when it was moved that both Canning and Brougham be taken into custody by the Sergeant-at-Arms. The written law of the mace, as compiled by Speaker Abbott, has been the guide of several generations of his successors.—*English paper.*