

Unreported Judgments

CONTEMPT

Robert Rumilly v. La Compagnie de Publication de la Presse Limitée and Normand Hudon, S.C.M. 562,306, February 28, 1964, Mr. Justice Harry Batshaw.

Contempt of Court — Motion for rule nisi — Statement made by Defendant on television — Authorities referred to.

Plaintiff made a motion for contempt of court and *rule nisi* as a result of a statement made by Defendant Hudon on television. The Plaintiff had instituted action against Defendants alleging defamation as a result of a caricature executed by Defendant Hudon and published in *La Presse*. The proceedings were in a state of abeyance pending an examination before plea. During the course of the T.V. interview, Hudon was asked whether his cartoons had ever involved him in law suits and he replied: "Il y a Rumilly (the Plaintiff) ; il s'est dégonflé comme d'habitude. Il a abandonné la poursuite sur le conseil de ses avocats . . ."

It was stated that the type of contempt here was that of abusing parties who are concerned in cases before the courts or in influencing or prejudicing public opinion against them before the case is heard. The court had to ascertain whether the statement was made with the intention of influencing the result of the trial or whether it might have that effect, whether so intended or not. Although the statements made were clearly prejudicial to Plaintiff's case, the fact that the plea had not been filed and the case was unlikely to be heard for two years was a mitigating factor in favour of the Defendant. Therefore, the motion was granted but for costs only.

PRIVILEGES

Be-Vi Investment Corp. v. Gravell Brick & Stone Co. (Que.) Ltd. et al., S.C.M. 10,239, ex parte, May 14, 1965, Mr. Justice Maurice Archambault.

Privilege — Supplier of materials — Petition to radiate — 805 and 2013 (e) C.P., and numerous authorities.

A supplier of materials entered into a contract with a general contractor to supply brick on a construction project. It was proved

that the owner approached the supplier, chose the bricks and discussed the price with him.

Held: This was insufficient and the petition to cancel the registration of privilege was maintained. Article 2013 (e) C.P. requires a written notice in these cases, and here there was none.

Held also, that this matter could be decided by petition (motion) pursuant to Article 805 C.P. Although the jurisprudence seems to be somewhat confused on this point, the learned judge opts for the view that the Superior Court, on motion, can decide these issues. A judge of the Superior Court does not lose jurisdiction to decide these cases on motion simply because a motion is contested.

PRIVILEGES

Megiddo Realty Corp. v. Cameo Wood Products Limited, et al. S.C.M. 9481, ex parte, May 8, 1964, Mr. Justice Remand Legault.

Privilege — Petition for cancellation — Registration — Whether premature 805 C.P.

A supplier's privilege was registered against Petitioner's property. Petitioner argued that as a term of 30 or 90 days had been granted for payment of the account and that the privilege was registered prematurely.

Held: Petition dismissed. The privilege was validly registered. The privilege existed from the time the materials in question were supplied. The only drawback that could exist would be that if the privilege were registered within 30 days of delivery and the debtor would offer payment, the creditor would be obliged to assume the costs of the registration of the privilege and its cancellation.

PRIVILEGES

Max Goldman v. A. Groleau Ltée, et al., S.C.M. 8926 ex parte, December 10, 1963, Mr. Justice G.B. Puddicombe.

Privilege — Petition for cancellation — Action taken — Whether lis pendens Whether petition can be taken after action instituted — 805 C.P.

A sub-contractor registered privileges against certain lots and subsequently instituted action. Petitioner then made a motion to radiate pursuant to 805 C.P. Respondent argued *lis pendens*.

Held: The exception by way of *lis pendens* was dismissed. The parties were not identical in the two proceedings, although both the

Petitioner and Respondent appear respectively as the Plaintiff and the mis-en-cause in the action. Nevertheless, as an action had already been instituted, the délibéré on the petition was discharged as it is inconceivable that judgment could be rendered in the action maintaining the right of privilege, and on the other hand, the petition in cancellation could be granted.

PRIVILEGES

Frank Feldman v. Canada Flooring Co. Limited et al., S.C.M. 6280 ex parte, December 10, 1963, Mr. Justice C.A. Sylvestre.

*Privilege: Petition for Cancellation — Action taken — Whether lis pendens
Whether petition can be taken after action instituted — 805 C.P.*

A supplier registered a privilege against certain properties and subsequently instituted action. Petitioner then made a motion to radiate pursuant to 805 C.P. Respondent argued *lis pendens*.

Held: The exception of *lis pendens* was maintained. The court referred to jurisprudence which has held that the requirements of *lis pendens* are the same as *res judicata*.

Moreover, the petition was premature and could not be made until the rights of the parties had been decided in the action.
