

Unreported Judgments

From time to time, judgments of interest to the legal community, for one reason or another, do not appear in the regular reports in this province. To fill this gap, the McGill Law Journal will publish summaries of unreported judgments which the editors feel should be brought to the attention of members of the Bar and Bench.

In order to accomplish our goal, we would appreciate the cooperation of judges and lawyers in informing us of judgments which they feel would merit inclusion in this section of the Law Journal.

PRIVILEGES

1366 Dorchester St. West Inc. v. Val Royal Building Materials Limited and Larue S.C.M. 8407 ex parte, July 29, 1963, Mr. Justice F.R. Hannen.

Privilege — Supplier of Building Materials — Petition For Cancellation by Owner — Notice — End of Work 2013, 2013(a), 2013(e) C.C., 1088(a) C.P. (now 805 C.P.).

Petitioner, the owner of an immovable property upon which an apartment house was being built, sought the cancellation of a privilege registered against the property by the supplier of building materials. It was alleged that Respondent had never sent the required written notice of its contract and that the privilege was registered beyond the delays required by law.

Held, petition dismissed. As to the requirement of notice, Respondent which entered into a contract with a co-owner and builder of the project, was not required to notify the other co-owner of its contract, in view of the close association between the undivided owners of the property. Also, the supplier was under no obligation to notify the present owner, the Petitioner herein, to whom the property had subsequently been transferred.

Held, further, on the facts, that the end of the work had not been reached when the privilege was registered. Substantial portions of the work remained to be completed. Moreover, a city official testified that no occupation permit had been issued as the building had not been completed in accordance with the requirements of the City of Montreal Building Code. Thus, the apartment was neither physically complete nor was it *legally* available for leasing.

PARTNERSHIP

Cordiano v. Desjardins, S.C.M. 453358, Dec. 2, 1963, Mr. Justice Harry Batshaw.

Concubines — Joint business efforts — Acknowledgement of partnership Sui generis.

The parties lived together in concubinage during which time they signed agreements acknowledging the existence of a partnership between them and proceeded to participate in various business enterprises. Plaintiff claimed from the Defendant a balance due by virtue of the terms of a notarial dissolution of partnership. Defendant argued that no partnership existed, the documents which she signed to that effect having been simulated and entered into only for the purpose of disguising the fact that she was making gifts beyond the scope of aliments to the Plaintiff in contravention of 768 c.c.

Batshaw, J. held that a partnership had in fact existed as the evidence indicated that the parties so intended. Because of the unusual situation in which it came into being, it may be one that is considered "sui generis" in its nature. It did have many of the characteristics of a universal partnership of gains (1861 c.c.) which comes from Roman Law. Although unusual or difficult to classify in terms of ancient forms, it is nonetheless real.

MARRIAGE

Bartschat v. Shore, S.C.M. 591868, Feb. 13, 1964, Mr. Justice Harry Batshaw.

Action in Annulment of Marriage — Petition For Provisional Allowance and Custody — Petition dismissed.

Plaintiff B., petitioned for a provisional allowance and provisional custody of the children during the pendency of an action in annulment of marriage.

Held, on the basis of the Civil Code and judicial decisions, that there was no right to the provisional remedies sought in an action in annulment of marriage. The court distinguished an action for separation from bed and board where the legislature has specifically provided for provisional measures from an action to annul a marriage, where the legislature has remained silent in this respect. To hold otherwise would require the court to legislate.

MARRIAGE

Roth v. Morgenstein, S.C.M. 477066, Jan. 12, 1962, Mr. Justice C.A. Bertrand.

Action in nullity of marriage — Consorts domiciled in Quebec — Desire to avoid religious ceremony — Civil ceremony in N.Y. — Art. 135 c.c.

The parties, domiciled in Quebec, were married in a civil ceremony in New York State, as a result of Defendant's refusal to go through a religious ceremony in Quebec. Defendant was unaware of the fact that the couple could have been married in Quebec by any minister authorized to keep registers of Acts of Civil Status. Plaintiff instituted an action in nullity of marriage alleging that the parties left Quebec with the sole purpose of evading Quebec law.

Held, the true object of the trip to N.Y. was not to evade Quebec law in the spirit of the Article 135 c.c., but to bypass a religious ceremony. The accepted interpretation of Article 135 restricts the exception it contains against foreign marriages to cases in which there is an obvious intention of defeating Quebec law in its fundamental prescriptions and where, in addition, the effect has been attained of violating them in their essential dispositions, if, for example, the plan is to avoid and foil an invalidating impediment.

PRIVATE INTERNATIONAL LAW

Bussieres v. Pélissier, S.C.Q. 84577, May 23, 1958, Mr. Justice P. Lesage.

Accident in France — Parties domiciled in Quebec — Action instituted in Quebec — Lex loci delicti commissi applied.

The parties, domiciled in Quebec, were involved in an automobile accident in France. An action for damages was instituted in Quebec and Plaintiff alleged that the responsibility of the Defendant must be determined by the law of France. Lesage, J. applied the *lex loci delicti commissi* and held Defendant liable.

This judgment marks a return to the traditional Quebec rule that extracontractual civil responsibility is determined by the *lex loci delicti commissi* which the Supreme Court departed from in *O'Connor v. Wray* [1930] S.C.R. 231. For a fuller description of the significance of this decision see P.-A. Crépeau, *De La Responsabilité civile extra-contractuelle* [1961] Can. Bar Rev. 3.