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.

OBLIGATIONS

Frank Engels v. *Globe Parking Ltd.*, S.C.M. 544,166, Jan. 24, 1964, Mr. Justice Arthur I. Smith.

Parking Lot — Car stolen — Recovered without contents — Liability of parking lot.

Plaintiff's car was stolen from Defendant's parking lot and, although it was later recovered, various articles left in the car were missing and Plaintiff claimed their value from Defendant.

The Defendant cited *Atlas Parking Ltd.* v. *Laferrière* [1962] B.R. 422 in support of the argument that the Plaintiff had no right of recovery in respect of the contents of the automobile. In the latter case, a car was parked in a lot. Unknown to the attendants, it contained $17,000 in furs. The furs were stolen from the car and transferred to the car of the thieves. Upon seeing the car of the thieves leave the lot by the entrance instead of the exit, the attendants, unaware of whether or not it was being stolen, brought it to the attention of a nearby policeman who stopped the car and through his own fault permitted the thieves to get away. The owner of the furs sued. The Court of Appeal rejected the action based, inter alia, on the fact that the responsibility for the theft had passed from the hands of the parking lot into that of the policeman.

Mr. Justice Smith distinguished the Atlas case, using some of the grounds of the Court of Appeal. Nothing in the Atlas case indicated that the owner of the lot intended to assume responsibility in regard to contents of such a high value in return for the small parking fee or that he could reasonably foresee so great a loss. On the other hand, he could reasonably foresee a loss of the usual articles to be found in an automobile and, therefore, was liable in the present case.

PRIVILEGES

Goodfellow v. *Martel & Brittle, et. al., S.C.M.* C-140,883, Jan. 17, 1936. Mr. Justice A. Duranleau.

Privilege — Supplier of Materials — End of Work — Plans and Specifications Whether landscaping included in determining date at which construction ready for use intended — A.376, 2013, 2013 (e),*c.c.*

Plaintiff G., a lumber dealer, sued defendant M., a general contractor, on a privilege in virtue of building materials supplied to M. for a house being built by M. for B. M. did not defend the action, but B., the owner, contested on the grounds, inter alia, that the action was instituted more than three months after the end of the work.

In the contract between the owner, B. and the contractor M. there was a clause which read in part "Lawns extending over the entire lot to be completed, sodded, ..." This clause was also included in the specifications prepared by the architect.

Held that the privilege subsisted. The word "immoveable" in Art. 2013 C.C. not only includes the building itself, but also the land which is given a plus-value by reason of work done or materials supplied. The word "construction" in Art. 2013 (e) C.C. must be interpreted in a wide sense to include improvements, alterations, repairs and other work done on the immoveable and which give it additional value. Thus, the delay to register the privilege only commenced when the exterior work such as levelling, sodding, etc. had been completed, as they were an accessory to the building and were part of the general contract.

PRIVILEGES

* *Kolostat Heating System Limited* v. *C. Jobin Limitée & Centre Commercial Levis Inc. et al,* S.C.Q. 128-225, Sept. 13, 1965, Mr. Justice E. Marquis.

Privilege — Sub-contractor — End of Work — Plans and Specifications — Deficiencies — Testing of Equipment — Suspension or Abandonment — Whether paving of parking lot included in determining date of end of work A.2013, 2013 (a) *& 2013* (f) *c.c., & authorities.*

Plaintiff K., a plumbing and heating sub-contractor, entered into a contract with the defendant J., a general contractor, for the mechanical work on a shopping centre being constructed. Upon the

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* Under appeal.

bankruptcy of defendant J., plaintiff registered a privilege on the immoveable belonging to the owner, C., for the remaining unpaid balance owing by the general contractor. Defendant, acting through the trustees in bankruptcy, confessed judgement for the amount claimed, but contested the privilege claimed by K., as did the owner C.

Held, the privilege was registered within the delays required by the Civil Code. When plaintiff registered its privilege more than one-fifth of the parking lot remained unpaved. As this formed an integral part of the main contract all the interested sub-contractors had the right to expect that their privileges would subsist so long as this work were not completed.

Held further, that the work was not abandoned, but merely suspended. There was no manifest desire to abandon nor was there any act which could be interpreted in any manner other than a mere suspension.

Held also, that as there were several deficiencies to be completed in plaintiff's contract which were admitted by defendant and which defendant required plaintiff to complete, the privilege still subsisted.

Held also, that so long as the ventilating system being installed by plaintiff could not be tested due to the winter weather and the owner could demand its testing and putting into proper working order, plaintiff had the right to register a privilege.

CIVIL LAW

Louis Tucker v. *Federation Insurance Company of Canada,* S.C.M. 371,161, July 19, 1962, Mr. Justice P.-E. Côté.

Performance Bond — Construction Contract — Bankruptcy of General Contractor —Liability of Surety — Nature of Contract.

Plaintiff T. entered into a contract with a general contractor for the erection of an apartment building at a fixed price. The contract required of the general contractor, at the option of the owner, the furnishing of a performance bond. At the demand of the plaintiff-owner, the contractor obtained a performance bond from the defendant company for the sum of $72,850, defendant binding itself to T., plaintiff. Defendant had dealt with the contractor previously and had access to its financial statement.

During the course of construction, several sub-contractors registered privileges and soon the contractor's financial difficulties became apparent. As one sub-contractor issued a seizure in garnishment

before judgment, further payments by the contractor could not be made and bankruptcy ensued shortly thereafter. It became necessary to call in a second contractor to complete the project. This resulted in an additional cost to the owner of more than $50,000.

Held, the surety was bound to the owner. A performance bond was a contract for the benefit of a third party (the owner) which was accepted by him when he disbursed to the defendant the price fixed as the consideration of the contract.

Held, further, that the contract is neither one of suretyship nor of insurance, as certain essentials of each were lacking, but rather it was a contract "sui generis" of the nature of a stipulation in favour of the plaintiff, whose acceptance rendered defendant jointly and severally liable with the contractor to the plaintiff.

LABOUR LAW

Vapor Heating Limited, Petitioner *v. United Steel Workers of America, Local 6192* and *Donald Rees, David Langlois* and *Bela Papp,* Respondents, S.C.M. 706,559, March 15, 1966, Mr. Justice François Auclair.

Illegal strike — Picketing by employees not allowed.

A strike contrary to provisions of the Labour Code took place and members of the Union, including Rees, Langlois and Papp, who were also officers of the Union, established picket lines to prevent other employees from entering petitioner's premises. On petitioner's motion for an interlocutory injunction based principally on the fact that the strike was illegal, an injunction was issued restraining and enjoining the Union, its officers, members and employees from, inter alia, continuing to picket, watch and beset the premises of petitioner.