Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Exchange Bank of Canada and others, v. *the Queen from the Court of Queen's Bench for the Province of Quebec, Lower Canada; delivered* 18*th February* 1886.

Present:

LORD FITZGERALD.
LORD MONKSWELL.
LORD HOBHOUSE.
SIR RICHARD COUCH.

The sole ultimate question in this case is whether the Crown, being an ordinary creditor of the Bank which has been put in liquidation, is entitled to priority of payment over its other ordinary creditors. That again depends on the question how the two Codes of Lower Canada are to be construed. Their Lordships think it clear, not only that the Crown is bound by the Codes, but that the subject of priorities is exhaustively dealt with by them, so that the Crown can claim no priority except what is allowed by them. If so, the other points which have been elaborately treated both in the colony and here are only of subsidiary importance, though undoubtedly they have a bearing on the construction of the Codes.

Their Lordships are also clear that the law relating to property in the province of Quebec or in Lower Canada, from 1774 to 1867 when the Codes came into force, must be taken to be the "Coutume de Paris," except in such special cases as may be shown to fall under some other

law. Probably such was the true effect of the statute 14 Geo. III., Cap. 83, but at all events there has been an uniform current of decision to that effect in the colony, dating back forty years or so before the date of the Codes, which ought not now to be questioned.

The next question is whether the French Law gave to the King a priority in respect of all his debts, or in respect only of those due from "Comptables." There does not seem to have been any difference of opinion on the point in the colony. The three Judges who decided for the Crown upon the ultimate question, and the two Judges who decided the other way, all thought that the priority given by the French Law extended only to "Comptables." And in the Appellants' case filed on the appeal from Mr. Justice Mathieu it is elaborately argued that the English Law and not the French prevailed in Lower Canada, but it is never suggested that the priority now claimed could be claimed under the French Law. That suggestion however has been made upon this appeal to Her Majesty, and has been strongly contended for at the Bar.

The matter rests wholly upon the French authorities, and it appears to their Lordships that the passage cited from Pothier (see Rec., pp. 82, 83) is conclusive of the question unless it can be contradicted or explained away. It is not conceivable that the advisers of Louis XIV. should, if an unlimited priority existed, address themselves to the exact definition by edict of a limited priority, or that Pothier should comment on that edict, all without any reference to the more sweeping rule. But so far from being contradicted or explained away, the passage in question is supported and emphasized by later authorities. There is the case reported by Sirey (Rec., p. 83) showing one limit of the King's

priority; viz., that his right against "Comptables" did not extend even to purveyors who might have been paid in advance. There are the authorities cited in the note to that case, who all draw the distinction between the one kind of Crown debtor and the other. There is the authority of the Nouveau Denisart, expressly drawing the distinction between the official debts of the "Comptable" and his private debts due to the King, and the case of the Sieur Bouvelais which illustrates that distinction (Rec., p. 139).

If the priority contended for existed in the French Law, there could be no difficulty in producing authority to that effect. English text-books and reports abound with assertions of the King's prerogative as we know it. But absolutely no authority was produced in the Colony in opposition to the decision of Mr. Justice Mathieu, and now nothing is produced except the work of a Counsellor of State writing in the year 1632.

Taking the French Law to be as laid down by the whole of the Judges below, the next question is, what is the proper construction of Art. 1994 of the Civil Code? And the only difficulty in it when considered alone arises from the use of the expressions "ses comptables" and "persons accountable for its moneys." Here again we have complete accord among the Judges in the Colony, that the expressions indicate not all the debtors of the Crown, but a limited class of such debtors, known to French lawyers under the name of "Comptables." The strongest expression of opinion to that effect is uttered by the Judges who decided in favour of the Crown. That opinion however is earnestly combated in this appeal.

That the word "Comptables" is a technical term of French Law, denoting officers who receive and are accountable for the King's revenues, has been abundantly shown from the Law Treatises

cited at the bar. It has not been shown that in legal documents the word is ever used in the general sense of "debtor" or "person responsible." It stands in the Code as it is likely a term of art would stand, as a noun substantive, which explains itself to lawyers by itself, and does not require the addition of any explanatory words, such as in the English version are found necessary because there is no corresponding English substantive. The draftsmen of the Code were working on the existing basis of French Law. They were in the main mapping out a system of French Law. It would be a marvellous thing indeed if persons so engaged were to use a technical term with a definite meaning well known to French lawyers, and precisely adapted to the position it occupies in the Code, and yet should intend to use it in some other sense, which is not its technical sense, for which it is not shown to be ever used, and for which other words are used.

Even the general dictionaries, five or six of which their Lordships have consulted, do not lend any countenance to the Respondent's argument.

The Académie first speaks of the word as a noun adjective thus:—"Qui est assujetti à rendre "compte; officier; agent comptable; les re- "ceveurs sont comptables. Je ne veux point de "place d'emploi comptable," which Tarver translates, "I don't want a place where accounts are "kept."

As a substantive it is said to be thus used:—"Les comptables sont sujets à être "recherchés. C'est un bon comptable," *i.e.*, a good accountant.

Laveaux says very much the same as the Académie. Both show that the word is used metaphorically, as "Nous sommes comptables de "nos talens."

Littré defines the adjective thus:—"Qui a

" des comptes à tenir et à rendre, officier, agent " comptable;" and he gives the metaphorical use. Of the substantive he says, " Celui qui est " tenu de rendre compte de deniers et de son " emploi."

Bouillet, in his " Dictionary of Commerce," says of the word as a substantive, " Le mot " s'applique a toute personne qui est assujettie a " rendre compte des affaires qu'elle a gerée."

Coutanseau and Spiers render it in English, " An accountant. A responsible agent."

Their Lordships have not found any trace of its being used in the general sense of a debtor or person under liability except in metaphor.

Tarver and Spiers render " debtor " simply by the word " debiteur."

Coming down to its special use in the instrument now being construed, their Lordships have found many passages in the Civil Code where the words " comptable " and " compte " are used strictly of those who are bound to account for particular transactions :—

As of a tutor, Art. 308 *et seq.*
of an heritier beneficiére, Art. 677.
of an executor, Art. 913 *et seq.*
of a husband for his wife's goods, Art. 1425.
of an agent, Art. 1713.
of partners, Art. 1898.

They have not been referred to and they have not found any passage in the Civil Code where these words are used to denote generally a debtor or person under liability.

For creditors and debtors the words used are " créanciers " and " debiteurs," see Tit. III. throughout, and particularly Cap. 7.

To express general liability the Code uses such verbs as " Tenir," " Repondre," " Charger," and their inflexions or derivatives.

If there be any difference between the French and English versions, their Lordships think

that in a matter which is evidently one of French Law, the French version using a French technical term should be the leading one. There might be cases in which such a question would arise. But it does not arise here. The expression "persons accountable for its moneys" is not calculated to convey to the mind of an English lawyer the notion of an ordinary debtor or of a banker. As between a banker and his customers, he, by English law, is an ordinary debtor, and the amount which he owes them is not "their" money, nor is he "accountable" for it in any but a popular sense. Arts. 1778 and 1779 of the Civil Code seem to be founded on the same view. Mr. Justice Ramsay says that to call a debtor accountable to his creditor would be a perversion of language. Their Lordships, without going so far, cannot see why, if the draftsmen of the English version intended to speak of debtors, they should not have used the common term for the purpose. Or rather they would have used no term at all, but would simply have mentioned the claims of the Crown, as they have mentioned the claims of the vendor and the lessor. In fact the terms used are strong evidence that in this passage the English version is really a translation from the French, and that in translating a French technical term for which there is no English equivalent, the draftsmen have used the best periphrasis they could think of. Their words are quite applicable to a "Comptable," *i.e.*, an officer collecting revenue, bound to earmark the funds, to account for them, and not to use them as his own. Such is the position of an officer under Act 31 Vict., cap. 3, sect. 18, as set out in the Record, p. 63. They may possibly include some other cases, but they are not applicable to a bank receiving money on deposit or current account.

Construing the words according to the technical sense of "Comptables," we come to the last question; which is the construction of Art. 611 of the Procedure Code.

In this Article, the word "defendant" is used with strict accuracy in reference to the subject matter of the title under which it is found, but must receive a reasonable latitude of construction in applying the Article to cases where there is no defendant. And it would seem that the words "in the absence of" would require to be read in the meaning of "subject to;" for it can hardly have been meant that the rule was not to apply in any case where there were some special privileges to be answered. When construed in all other respects literally the Article certainly gives to the Crown the priority claimed for it in this suit. But then it comes into conflict with Art. 1994 of the Civil Code.

In the first place, by giving to the Crown a priority for all its claims, it swamps the limited priority given by the 10th head of Art. 1994, and renders that head unmeaning. But beyond this there is actual inconsistency between the two Articles. According to the literal construction of 611, the Crown has priority over funeral expenses and other classes of debts which by 1994 have priority over the Crown.

It would seem that the majority of the Queen's Bench paid no attention to this conflict. They say they are asked to "set aside" 611 on the ground that it got into the Code in some wrongful way. They were asked to do so, and were quite right in their refusal. But they were also asked to construe the Codes as they stand, and as Mr. Justice Mathieu had done. They do not notice the conflict of 611 with 1994 or the necessity of modifying the construction of one or the other. But the duty of the Judge is, if

possible, to reconcile the two, and for that purpose to look at all relevant circumstances.

The Appellants at the Bar have pressed somewhat too absolutely the argument that a Procedure Code is not intended to enact substantive law, and that this part of the Procedure Code is only intended to give directions to the Courts how to carry the rules of the Civil Code into effect. Some of the Articles of the Procedure Code (*e.g.*, Art. 610) do create or establish rights not touched by the Civil Code. The two Codes should be construed together in this part just as if the Articles of the Procedure Code followed the corresponding Articles of the Civil Code.

So reading them, we find that the main purpose of this part of the Procedure Code is to carry into detail the principles laid down in the Civil Code, which are repeated in the form of directions how money is to be distributed. And where fresh classes of priorities are established, they are subordinate classes not interfering with the larger classification of the Civil Code. Of course it could be no part of the Procedure Code to contravene the principles of the Civil Code, and it is clear from Art. 605 that the two were believed to be working in harmony. And when the Procedure Code is found to overlap the Civil Code, and so it becomes necessary to modify the one or the other, the fact that the function of the Procedure Code is in this part of it a subordinate one favours the conclusion that it is the one to be modified.

That there should have been any deliberate intention of giving a large extension of privilege to the Crown by the indirect method of inserting a provision in a group of clauses relating to a judicial distribution of property taken in execution, is a thing highly improbable in itself. And the improbability is much heightened by

the fact that at the same instant the Legislature was engaged in cutting down throughout Upper Canada the very same privilege which it is held to have been setting up throughout Lower Canada.

The foregoing are their Lordships' reasons for concluding that full effect should be given to Art. 1994, and that Art. 611 should consequently be modified so as to be read in harmony with the other. There is difficulty about it, as there always is in these cases of inconsistency. Following the rule laid down for their guidance in such cases by Section 12 of the Civil Code, their Lordships hold that the meaning of the Legislature must have been to speak to the following effect:—"Subject to the special privileges pro- "vided for in the Codes, the Crown has such "preference over chirographic creditors as is "provided in Art. 1994." Or adhering as closely as possible to its rather inaccurate language, "In the absence of any special privilege, the "Crown has a preference over unprivileged "chirographic creditors for sums due to it by "the defendant, being a person accountable for "its money."

It may be objected that, thus read, the Article is only a repetition of what is contained in the Civil Code. That is so, but it will be found that some of this group of Articles (Art. 607 may be taken as an example), in fixing the rank of recipients of a fund actually under distribution, do contain repetitions of the corresponding Articles of the Civil Code which give the same rank in the wider and more abstract form of privileged claims or "créances." The objection therefore is not a serious one, as the repetition results from the principle on which these portions of the two Codes are framed.

This reading is nearly the same as the readings proposed by Mr. Justice Mathieu and Chief Justice Dorion. It is a large modification

of the words, but not larger than is required to bring the two sections into harmony. There is ample authority for it in Carter *v.* Molson, and the other cases cited at the bar, and in that of the Windsor and Annapolis Railway (7, App. Ca., p. 178).

The result is, that in the opinion of their Lordships the Court of Queen's Bench ought to have dismissed with costs the appeal from the Superior Court. They will now humbly advise Her Majesty to make such a decree. The Respondents, by whom the Crown is represented, will pay the costs of the consolidated appeals.