he did take possession, he says. When pleading he does not claim to be holding for himself, or as owner, nor does he say for whom he holds. He admits by his deposition his possession to have been such that it is seen tortious.

It may be added further in connection with this deed of donation, unburied by the defendant, that it was of lands, household furniture, cattle, under charges quite onerous and calling for duties and outlays by Joseph, year by year, month by month, in favour of his father and mother; he was to house and feed them, *à son ordinaire*, warm, nurse and clothe them, and, on their deaths, bury them; but he almost immediately abandoned them, leaving all in their possession luckily as before; he left for the States, and in the eighteen years before this suit he had not spent more than a few days in Canada, on a visit; previous to which time he had been absent for long term of years. The defendant says that Joseph left this country for the first time thirty-four years ago, and, according to his belief, has been dead twelve years. Is such a defendant favourable? The Court below evidently thought not, and we see no cause to disturb its judgment.

Judgment confirmed.

De Bellefeuille & Bonin for plaintiff.
Piché & Moffatt for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, November 22, 1881.

DORION, C. J., RAMSAY, TESSIER, CROSS & BABY, JJ.

THE MOLSONS BANK (plff. below), Appellant, & LIONAIS es qual. (deft. below), Respondent.

Saisie-arrêt—Debt which becomes due to defendant between service of saisie-arrêt and declaration of garnishee.

The attachment in the hands of a garnishee of a debt afterwards due to the defendant by the garnishee, is valid, if such debt becomes due before the garnishee makes his declaration.

The appeal was from a judgment of the Court of Review at Montreal, March 31st, 1880;—See 3 Legal News, p. 116, for report of the case in the Court below.

RAMSAY, J. The appellant took out a seizure in the hands of "La Societé de Construction des Artisans," to attach the goods, moneys, credits and effects the said Society may have in its hands belonging, or due, or to become due to the said defendant, H. Lionais es qual. The writ then goes on to summon the said H. Lionais es qual. to be and appear to hear the said attachment declared good and valid. There was no summons to the *Tiers Saisie*. The writ was served on the *Tiers Saisie* on the 11th March, 1879, and on the defendant on the 12th March. It was returnable on the 24th. By the return it seems as though the writ was only returned on the 26th.

It seems, although not summoned, that the *Tiers Saisie* appeared and made a declaration to the effect that nothing was due by the *Tiers Saisie* at the time of summons; but on the day following (12th March) one Galarneau sold to the *Tiers Saisie* a certain property, to be paid for on the 7th Dec., 1880, "*ou avant, si la chose etait exigée pour et à l'acquit du vendeur*," to the heirs and representatives of the late Mrs. Lionais, a sum of $200 and interest. That there was no acceptance of this *indication de paiement*, but that the respondent es qual. had by notarial deed of the 18th, transferred the debt to Mr. Joseph, and that this transfer had been signified to Galarneau on the 22nd.

The defendant did not appear nor plead to the sufficiency of the proceedings, nor in any way contest them; default was entered, and judgment taken condemning the *Tiers Saisie* to pay the $200 to the appellant. This judgment was of the 17th October, 1879.

On the 25th the appellant appeared and inscribed the case in Review, and raised three questions of form, and one substantial reason for setting aside the judgment.

The formal grounds are:—

(1) That he had no notice of inscription for hearing in the Court of first instance.

(2) That there was no summons to the *Tiers Saisie*.

(3) That the writ was returnable on the 24th, and it was not returned until the 26th.

The first ground is readily answered. The case being by default he was not entitled to any notice. The second is scarcely more difficult. Defendant was summoned, and he should have objected at once to the error in the writ if he had really any interest in raising the question; but now the writ having answered its purpose, he is too late in raising a question which does not affect him directly. The third ground is more difficult. If the writ was only returned on the 26th, he has not had an opportunity to be heard,