sum of $4,000 deposited by the appellants as security for land taken for railway purposes, a Judge of the Superior Court in Chambers, after formal answer and hearing of the parties, granted the order. 42 Vict., ch. 9, sec. 9, sub-sec. 31. The railway company appealed against this order to the Court of Queen's Bench for Lower Canada (appeal side), and that Court affirmed the decision of the Judge of the Superior Court. On appeal to the Supreme Court of Canada it was

Held, that as the proceedings had not originated in the Superior Court of the Province of Quebec, the case was not appealable. R.S., ch. 135, sec. 28.

2. That the Judge of the Superior Court, when he made the order in question, acted as a *persona designata*.

Appeal quashed with costs.

H. Abbott, Q.C., and *Ferguson*, for appellants.
Pagnuelo, Q.C., for respondents.

OTTAWA, June 14, 1889.

Quebec.]

STEPHEN H. THOMPSON v. THE MOLSONS BANK.

The Banking Act—Rev. S. C., ch. 120, secs. 53 et seq.—Warehouse receipts—Parol agreement as to surplus—Effect of—Locus Standi—Art. 1031, C.C.

The Molsons Bank took from one H. several warehouse receipts as collateral security for commercial paper discounted in the ordinary course of business, and having a surplus from the sale of the goods represented by the receipts after paying the debts for which they were immediately pledged, claimed under a parol agreement to hold that surplus in payment of other debts due by H.—H. having become insolvent, T. (appellant) under art. 1031, C. C., brought an action against the bank claiming that the surplus must be distributed ratably among the creditors generally. H. was a member of the firm of H. & H. and they were not parties to the suit.

Held, affirming the judgment of the Courts below, that the parol agreement was not contrary to the provisions of the Banking Act, ch. 120, secs. 52 et seq. That after the goods were lawfully sold, the money that remained, after applying the proceeds of each sale to its proper note, was simply money held to the use of H subject to the terms of the parol agreement. (Ritchie, C.J., *dubitante*, and Fournier, J., dissenting).

Per Taschereau, J., that H. & H. ought to have been made parties to the suit.

Appeal dismissed with costs.

Robertson, Q.C., and *Falconer*, for appellant.
H. Abbott, Q.C., for respondents.

OTTAWA, June 14, 1889.

Quebec.]

HOLMES et vir v. CARTER.

Seizure of Bank shares in trust—Onus probandi—Res judicata.

The respondent having obtained a judgment against A.M., served a writ of *saisie-arrêt* upon the Molsons Bank. The Bank through its manager declared they held 115 shares of the capital stock of the Molsons Bank and the dividends accrued thereon since 1879 standing in the name of A. M. in trust for E.A.M. *et al.* E.A.M. intervened and claimed that the shares were her property and that the seizure should be set aside. The respondent contested the intervention, contending that the shares had been purchased with the monies of A.M., and so placed in trust to prevent his creditors having any remedy against these shares, and moreover pleaded *res judicata*, the Privy Council having already decided that the dividends of a certain number of the shares seized and standing in the same account in trust were not the property of E.A.M. *et al.*

The evidence at the trial established that E.A.M. was the wife duly separated as to property of A.M., that she had means of her own, and that the shares in question had been originally purchased by A.M. as her duly authorised agent. There was no evidence to prove that the shares had been purchased with A.M's monies. The decision of the Privy Council was that E.A.M. had no right to claim the interest of 33 shares under the will of the late Hon. W. Molson, nor to rank as a creditor on her husband's estate on the ground of insolvency.

Held, reversing the judgment of the Court of Queen's Bench, that the shares seized being held by the Bank in trust for E.A.M. *et al.*, the onus of proof was on the respondent to show that the shares had been purchased