

"Seeing that the female plaintiff seeks to revendicate by this action certain effects which she claims as her property; and that she alleges in her declaration, that the said effects had been seized in the possession of one Frederick Fooks, at the instance of the present defendant, under and in virtue of a writ of execution issued from the Circuit Court, in and for the district of Ottawa, in a certain cause bearing the No. 547, wherein the present defendant was plaintiff and the said Frederick Fooks was defendant, and placed under the care and guardianship of one James Thom;

"Considering that at the time that the said effects were seized by way of revendication, they were already under judicial control;

"Considering that under and in virtue of articles 580 and 582 of the Code of Civil Procedure, the proper recourse of the female plaintiff is by opposition to the seizure of the effects and not by attachment in revendication;

"Considering therefore that the present action is unfounded in law and that it has been wrongfully brought;

"Considering that the ground or reason lastly alleged and set forth in the demurrer pleaded by the defendant, is well founded and sufficient to obtain the dismissal of the present action:

"Doth dismiss the action in this cause, and release the effects seized in revendication from the attachment in revendication, with costs."

N. A. Belcourt, for Plaintiffs.

Henry Aylen, for Defendant.

#### COURT OF QUEEN'S BENCH— MONTREAL.\*

Secretary-treasurer—Notice of action—C. C. P. 22—Quebec Election Act, 38 Vic., ch. 7—Transmission of duplicate of electoral list to Registrar.

HELD:—1. (Affirming the decision of TASCHEREAU, J., M. L. R., 1 S. C. 323):—A public officer is not entitled to notice of action under C. C. P. 22, where the action is

for a penalty for failing or omitting to do what the law requires him to do.

2. (Reversing the decision of TASCHEREAU, J., *supra*). The fact that the electoral list was still under the consideration of the Council, is not a valid ground of defence, where a secretary-treasurer is sued for a penalty for not transmitting a duplicate of the list to the registrar of the registration division, within eight days after it came into force, as required by 38 Vict. (Q.) ch. 7, and the penalty may be recovered even where the secretary-treasurer does not appear to be in bad faith. *Jodoin, Appellant, and Archambault, Respondent*, Nov. 23, 1886.

#### SUPERIOR COURT.—MONTREAL. (\*)

Lessor and Lessee—Repairs to leased premises—Putting lessor *en demeure* to make repairs.

HELD:—That the lessee is not entitled, without first putting the lessor *en demeure*, to demand the resiliation of the lease because repairs are necessary. Unless the condition of the premises be such as absolutely to prevent his use and enjoyment, the proper course is for the lessee to ask that the lessor be ordered to make the repairs which are necessary, and, in default, that the lessee be authorized to make them at the lessor's expense.—*Pagels v. Murphy*, In Review, Johnson, Papineau, Gill, JJ., Dec. 30, 1886.

Procedure—Tierce-opposition—Saisie-arrest—C. C. P. 510, 625.

HELD:—That a tierce-opposition, unless accompanied by an order of a Court or judge, does not suspend the execution of a judgment, and that a *tiers-saisi*, paying in good faith the amount of the final judgment, will be discharged notwithstanding the prior service upon him of a tierce-opposition, without order of suspension.—*Mullen et al. v. Pearl, & Trépannier, & The Commercial Union Ass. Co.*, T. S., Cimon, J., Jan. 13, 1887.

Cour du Recorder de Montréal—Jurisdiction—Prohibition avant conviction—Preuve testimoniale.

\* To appear in Montreal Law Reports, 3 Q. B.

(\*) To appear in Montreal Law Reports, 3 S. C.