

*thèque* or privilege accessory or belonging thereto. For which reasons the Appellant prayed that the opposition of the Respondent might be dismissed with costs.

No further pleadings were filed, the cause being inscribed by consent for hearing on the merits of the opposition of the Respondent, to determine the order, rank, and privilege of his claim as a guide to the future distribution of the monies then before the Court.

On the 18th of *October* 1834, the Court of King's Bench in *Montreal*, after hearing the parties, gave the following judgment :—

“ The Court having heard the Plaintiff, and the opposant, *David Brown*, on the merits of the opposition made by *Archibald Ferguson*, in his capacity of tutor to the said *David Brown*, examined the proceedings and pleadings, and also the documents filed of record. It is considered that the said *David Brown* is not entitled to be collocated in the distribution of the monies levied under the writ of execution, issued at the suit of the Plaintiff, against the lands and tenements of the said Defendant, according to his pretension contained in the *moyens* or reasons of opposition in the cause filed, that is to say, as having a mortgage (*hypothèque*) from the 17th day of *April* 1812, the day of the date of the marriage contract, between the said *John Brown* and *Margaret Smith*; and the Court reserves to adjudge further in the premises, until all the parties be heard on the distribution to be had of the said monies; and further it is considered that the said opposant do pay costs to the plaintiff on the issue raised on the said opposition.”

From this judgment the Respondent appealed to the Provincial Court of Appeals, before which the cause was heard on the 30th *April* 1835, when that Court reversed the decision of the Court below, and pronounced the following judgment :