

was born in England on the 16th of September, 1806. He came to Canada with his father in early youth, and applied himself to the study of the legal profession, to which he was admitted in due course. In 1841 he was appointed the first Master of the Court of Chancery of Upper Canada. In 1850 he was appointed Vice-Chancellor, and in 1869, on the death of Chancellor Blake, Mr. Spragge succeeded to the high office of Chancellor. A further step was still in reserve, for upon the death of Chief Justice Moss in 1882, Chancellor Spragge was offered and accepted the office of Chief Justice of the Court of Appeal, which he retained until his death.

The late Chief Justice was painstaking and careful in all that he did, and it is well known that such men, even with moderate parts, make safer judges in these days than those who, through over anxiety to obtain a reputation for brilliancy, fly to eccentricities of judgment. Chief Justice Spragge, however, united to a high degree of conscientiousness, a sound judgment, which was not only unimpaired but cultivated and ripened as years rolled on. As a private citizen as well as in his capacity of Chief Justice of Ontario, he enjoyed the esteem of all classes of the community.

Since the above was written, Chief Justice Hagarty, at the opening of the York Criminal Assizes, April 22, referred to the demise of his learned brother in the following terms:—

“The Court will adjourn early to-day in order to pay the last tribute of respect to the distinguished judge who has just passed from among us. To say that his judicial career of 34 years has been one of unsullied purity, is a tribute that may safely be paid to the memory of all departed judges of Ontario. The province has had the benefit of his high attainments, patient labours, courteous manners, and sagacious judgment for a period almost equal to that of his greatest predecessor, Sir John Robinson, a name dear to all Canadians, and especially to the Bench and bar of his much-loved country.

“Chief Justice Spragge has been taken from us in the midst of his labours, dying in his harness as a good judicial soldier. For myself I have to lament the loss of a valued friend and fellow labourer for many long years, and to one toiling in the same field for nearly nine and twenty years, his death speaks with a mournful significance and timely voice of warning.”

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

MONTREAL, February 21, 1884.

DORION, C.J., MONK, RAMSAY, CROSS, and  
BABY, J.J.

MCDONELL et al. (plffs. below) Appellants, and  
BUNTIN (deft. below) respondent.

*Procedure—Judgment of distribution—Art. 761,  
C.C.P.*

*An action will not lie by a hypothecary creditor, who has not been collocated in a report of distribution for a claim against an immovable mentioned in the registrar's certificate, to recover from a party alleged to have been illegally collocated by preference, the sum which plaintiff claims belonged of right to him. The recourse of a party aggrieved by a judgment of distribution is by appeal, or by petition in revocation, or by opposition to the judgment, as pointed out in C.C.P. 761.*

The appeal was from a judgment of the Superior Court, Montreal (Rainville, J.) maintaining a demurrer filed by the respondent to the action of the appellants. (See 6 Legal News, p. 160; 27 L.C.J. 73.)

The declaration alleged that the plaintiffs (appellants) are the owners of a *baillieur de fonds* claim for \$330 on certain real estate described in the declaration, which had been sold by the sheriff, and that Buntin, the respondent, had been collocated by preference and had received under the judgment of distribution the said sum of \$330 which of right belonged to the appellants.

The action was met by a demurrer based chiefly on Art. 761 of the Code of Procedure, which states that “any party aggrieved by a judgment of distribution may seek redress by means of an appeal, or a petition in revocation, etc.,” and “any creditor mentioned in the registrar's certificate, who has not appeared in the cause, may, moreover, within fifteen days, seek redress by means of an opposition to the judgment.” The respondent contended that the judgment of distribution could not be attacked except in the modes pointed out in the article.

The Court below maintained the demurrer: “Considérant qu'en vertu de l'article 761 de