scholarships will be offered—seven to those who pass the examination as their First Intermediate Examination, and seven to those who pass it as their Second Intermediate Examination. The amounts will be one of $100, one of $60, and five of $40 each.

SUPREME COURT OF CANADA.

OTTAWA, June 14, 1889.

Quebec.]

THE EXCHANGE BANK OF CANADA v. GILMAN.

Art. 451 *C. C. P.—Retraxit—Subsequent action —Document not proved at trial—Inadmissible on appeal—Lis pendens and Res judicata—Pleas of.*

The Exchange Bank of Canada, in an action they instituted against G., filed a withdrawal of a part of their demand in open Court, reserving their right to institute a subsequent action for the amount so withdrawn. The Court acted on this *retraxit*, and gave judgment for the balance. This judgment was not appealed against. In a subsequent action for the amount so reserved:

Held, reversing the judgment of the Court below, that the provisions of Art. 451 C.C.P. are applicable to a withdrawal made outside, and without the interference of the Court, and cannot affect the validity of a withdrawal made in open Court and with its permission.

2. That it was too late in the second action to question the validity of the *retraxit* upon which the Court had in the first action acted and rendered a final judgment.

3. That a document relied on in the Court of Queen's Bench not proved at the trial, as setting aside the final judgment rendered in the first action, cannot be relied on or made part of the case in appeal. *Montreal L. & M. Co.* v. *Fauteux*, 3 Can. S.C.R. 433, and *Lyonnais* v. *Molsons Bank*, 10 Can. S.C.R. 527, followed.

4. That under the circumstances the defendant's pleas of *lis pendens* and of *res judicata* could not be maintained.

Appeal allowed with costs.

Macmaster, Q.C., for appellant.

Gilman for respondent.

OTTAWA, June 14, 1889.

Quebec.]

DUFRESNE et al. v. DAME MARIA DIXON.

Action en nullité de décret—Registration of deed — Art. 2089 *C. C. — Preference between purchasers who derive their respective titles from the same person.*

D. et al., judgment creditors of one W.A.C., seized and sold a lot of land situate in the city of Montreal as belonging to his estate. This lot had originally belonged to Dame M.D., who sold it to W.A.C. et al., and subsequently W.A.C., who became the registered owner of the lot, re-assigned it to Dame M.D. The property was occupied by Dame M.D. through her tenant at the time of the seizure.

The sheriff's sale took place on the 3rd October, 1884. Dame M. D. registered her deed of re-assignment on the 28th November, 1884, and on the 4th May, 1885, the purchasers registered their deed of purchase.

The respondent by petition to the Superior Court prayed for the setting aside of the sheriff's decree.

Held, affirming the judgment of the Courts below, that respondent having been for a long time in open, peaceable and public possession of her property, and notably so at the time of the seizure, the sheriff's seizure and sale thereof at the instance of the appellant, was null as having been made *super non domino*.

2nd. That notwithstanding the adjudication by the sheriff on the 3rd of October, 1884, the title not having been granted until the 4th May, 1885, and respondent having registered her deed of retrocession on the 28th of November, 1884, respondent was entitled to the conclusions of her petition.

Appeal dismissed with costs.

Pagnuelo, Q.C., and *Geoffrion, Q.C.*, for appellant.

Lacoste, Q.C., and *Grenier*, for respondent.

OTTAWA, June 14, 1889.

Quebec.]

CANADIAN PACIFIC RAILWAY CO. v. COLLEGE OF STE. THERESE.

Expropriation of land —Order by Judge in Chambers as to monies deposited—Not appealable—R. S. C. ch. 135, *sec.* 28—42 *Vic. ch.* 9, *sec.* 9, *sub.-sec.* 31—*Persona designata.*

The College of Ste. Therese having petitioned for an order for payment to them of a