

seigniory or of the redemption of the said *constituts* without the consent of the said Jean-Emmanuel Dumoulin, named Executor of the said last Will, willing that the said Jean-Emmanuel Dumoulin should continue as such Executor to superintend the investment of the said monies, until they should be invested, any lapse of time notwithstanding.

That the said Pierre Michel Cressé departed this life on the 3rd August, 1819.

That on the 8th September 1839, by order of the Honorable J. R. Vallières de St Réal, Resident Judge of the District of Three-Rivers, the said W. R. A. Gilmor, the Respondent, was appointed Testamentary Executor of the said late P. M. Cressé, in the place of the said Jean-Emmanuel Dumoulin.

That on the 30th June, 1831, by deed of *constitution de rente*, executed at Three Rivers aforesaid, before Badéau and another, the Honorable Louis Gagy, Esquire, created, settled and assigned, with warranty *de fournir et faire valoir*, to the said J. E. Dumoulin, in his said quality of Testamentary Executor, the sum of thirty-six pounds currency of annual and constituted rent payable to and in the manner mentioned in the said deed. That the said *constitution de rente* was made in consideration of six hundred pounds; the receipt whereof was acknowledged by the said Gagy. That for security of the said *rente* the said Gagy promised to furnish, as *cautions solidaires* with him, the Appellant in this cause and Thomas Gagy, his son, and as *caution simple*, the Honourable John Caldwell.

That subsequently, by deed alleged in the said Opposition, the said Appellant and the said Thomas Gagy, and the said John Caldwell, became the sureties of the said Louis Gagy under the terms of the said *constitution de rente*, and that the said *cautionnement* was accepted and ratified by the said Dumoulin.

And lastly, that by reason of the premises the immoveables of the said Appellant, and among others the property sold to the said James Douglas, were hypothecated, as well for the *rente* as for the principal of the said *constitut*.

The Opposant, concluding upon these premises that no sentence or judgment of confirmation should be pronounced in favour of the said Douglas, in relation to the sale or alienation of the said lot of ground and premises, except upon the charge and condition that the said Gilmor should out of the price of sale be paid the aforesaid sum of six hundred pounds, with interests and costs.

Upon the filing of this and other Oppositions in the cause the Appellant was permitted to intervene therein, and on the 16, September, 1844, his intervention was duly filed.

Having previously given notice of contestation to the Opposant Gilmor, the Appellant on the 23rd September, 1844, pleaded to the said Opposition;

1st.—The *Défense au fonds en fait*; and, 2ndly, a perpetual *exception péremptoire en droit*.

The Respondent took issue upon these pleadings, by general answers and replications, and the parties having gone to *Enquête*, were heard upon the merits, upon which the Court below, on the 27th November, 1844, ordered that the parties should be reheard, touching the legality of the appointment *par autorité de justice*, of the Respondent Gilmor to be the Testamentary Executor of the said P. M. Cressé; upon this order