

has been appointed deputy judge of the County Court of the County of Essex.

Mr. Montague William Tirwhitt Drake, Q.C., of Victoria, British Columbia, has been appointed a Puisné Judge of the Supreme Court of the Province of British Columbia, vice the Honourable John Hamilton Gray, deceased.

#### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

LONDON, July 27, 1889.

**Present:**—LORD WATSON, LORD HOBHOUSE, LORD MACNAGHTEN, SIR BARNES PEACOCK, SIR RICHARD COUCH.

SENÉCAL, appellant, & PAUZÉ, respondent.

**Pledge**—Art. 1975, C.C.—*Agreement for sale—Not accepted until after insolvency of promisor—Debentures—Value.*

**HELD:**—1. *In order to have the benefit of Art. 1975 C.C.,—which provides that "if another debt be contracted after the pledging of the thing and become due before that for which the pledge was given, the creditor is not obliged to restore the thing until both debts are paid,"—the creditor must plead this defence specially.*

2. *If the creditor at the time he is sued for the restitution of the thing pledged, has already parted with it, or treated it as his own property and shown that he has no intention of restoring it, he is not entitled to the benefit of the defence under the above mentioned article.*

*Several persons having claims against a railway company executed an agreement to deliver to one G. the debentures of the company held by them, on payment of the respective amounts shown opposite their respective names. It was proved that this agreement was executed at G.'s request, but it was not accepted nor acted upon by G. until after the insolvency and death of P., one of the signatories.*

**HELD:**—3. *That this document was not to be regarded as an unilateral agreement binding the signatories for an indefinite time to sell their debts to G. at a certain price; but rather as an arrangement for the purpose of defining their respective claims against the company; and it was not competent*

*for G. to treat the document as an agreement for sale of which he might avail himself whenever he chose.*

4. *In any case an acceptance of the agreement by G. and a transfer of his rights thereunder to a third person, after the insolvency and death of P., one of the signatories, could not bind P.'s estate.*
5. *Where debentures were deposited with a creditor as security for a specific debt due to him by the depositor, and the debt is tendered to the creditor, the latter is obliged, in default of restoring the thing pledged, to pay the value of the debentures at the time the restitution is demanded; and, where no proof is made to the contrary, this will be assumed to be their nominal or par value.*

The appeal was from a judgment of the Court of Queen's Bench, Montreal, reversing a judgment of the Court of Review, and restoring the judgment of the Superior Court. See 7 Leg. News, 30; M.L.R., 1 S.C. 467.

The judgment of their lordships was delivered by

LORD MACNAGHTEN:—

In this case their lordships are of opinion that the judgment of the Court of Queen's Bench ought to be affirmed.

It appears that, on the 31st of January, 1880, one Pangman deposited with Senécal 54 debentures of the Laurentian Railway Company, of the nominal value of \$500 each, as collateral security for the payment of two promissory notes of the same date of \$1,000 each, payable the one 10 months and the other 12 months after date.

On the 11th of November, 1880, Pangman died insolvent. His heirs renounced the succession, and the respondent Pauzé, one of his creditors, was duly appointed curator to his vacant estate.

On the 6th of April, 1882, Pauzé tendered to Senécal the sum of \$2,152, the amount then due in respect of the two promissory notes, and demanded a return of the debentures.

Senécal refused to comply with this demand; Pauzé then brought the present action to recover the debentures, repeating his tender.

The Superior Court (Papineau, J.) gave