Per TASCHEREAU, J.—If any action laid at all, it could only have been to set the sale aside, the parties being restored to the *status quo ante* if it were maintained.

Appeal dismissed with costs.

Irvine, Q.C., for appellant.

Casgrain, Q.C., for respondent.

OTTAWA, April 30, 1889.

Quebec.]

MITCHELL v. MITCHELL.

Removal of executor—Arts. 282, 285, 917, *C.C.*

Held, affirming the judgment of the Court of Queen's Bench (Appeal side), Montreal, (M. L. R., 4 Q. B. 191), that Art. 282, C. C. does not apply to executors chosen by the testator, and that in an action for the removal of one executor, when there are several executors, the existence of a law suit between such executor and the estate he represents, and the evidence of irregularities in his administration, but not exhibiting any incapacity or dishonesty, are not a sufficient cause for his removal. Arts. 917, 285 C. C. (Strong, J., dissenting.)

Appeal dismissed with costs.

Lafleur & Rielle, for appellant.

Delisle, for respondent.

Quebec.]

WEIR v. CLAUDE.

Pollution of running stream—Long established industry—Nuisance—Injunction.

W. acquired a lot adjoining a small stream at Côte des Neiges, Montreal, and finding the water polluted by certain noxious substances thrown into the stream, brought an action in damages against C. the owner of a tannery situated fifteen arpents higher up the stream, and asked for an injunction. At the trial it was proved that C. and his predecessors from time immemorial carried on the business of tanning leather, there using the waters of the stream, and that it was the principal industry of the village, that the stream was also used as a drain by the other proprietors of the land adjoining the stream, and manure and filthy matter were thrown in, and that every precaution was taken by C. to prevent any solid matter from falling into the creek, and that W.'s property had not depreciated in value by the use C. made of the stream.

Held, affirming the judgment of the Court below, M. L. R., 4 Q. B. 197, that, as between neighbours there are other obligations than those created by servitudes, which must be determined according to the quality of the locality, the extent of the inconvenience, and also according to existing usages. Under the circumstances proved in this case, W. was not entitled to an injunction to restrain C. from using the stream as he did.

Appeal dismissed with costs.

Lafleur & Rielle, for appellant.

Laflamme, Q.C., for respondent.

QUEEN'S BENCH DIVISION.

LONDON, May 1, 1889.

CHISHOLM (Appellant) v. DOULTON (Respondent). (24 L. J. N. C.)

Metropolis—Smoke of Furnaces—Negligent Use of Furnace by Servant—Liability of Owner to Penalty.

Case stated by metropolitan police magistrate.

An information was laid against the respondent for negligently using a furnace employed by him on his trade premises, within the metropolis, so that the smoke arising from it was not effectually consumed, contrary to 16 & 17 Vict., c. 128, s. 1.

It was proved that the respondent carried on business as a potter upon the premises; that black smoke issued from the furnace for ten minutes; that the furnace was constructed and arranged on the best-known principles for consuming its own smoke; and that the respondent took no personal part in the management of the furnaces, which were in charge of an efficient foreman, whose duty it was to superintend the stokers. There was no negligence either on the part of the respondent or of the foreman in charge of the furnaces.

The Court (FIELD, J., and CAVE, J.) held that on the true construction of the Act the respondent could not in the absence of negligence on his part be rightly convicted.

Appeal dismissed.