

seized, attached or sold for the debts of him, the said appellant, they being by the said will declared to be *inaliénables et insaisissables* and bequeathed à titre d'aliments ;

"And considering that the said respondent by his answers to the said contestation, contends that the said 148 shares in the capital stock of the Molsons Bank did not form part of the estate of the late John Molson and were not therefore subject to the condition of *insaisissabilité* imposed by the will of the late John Molson, and the said lot of land No. 185 of the cadastral plan of the west ward of the city of Montreal has ceased to be subject to the said condition by virtue of the sale of the said lot of land by the deed of the 15th of June, 1871, whereby the said lot of land became the absolute property of the said appellant, and ceased to form part of the property composing the estate of the said late John Molson ;

"And considering as regards the said 148 shares in the capital stock of the Molsons Bank, that although it appears by the evidence that the late John Molson was possessed at the time of his death of 3,200 shares in the capital stock of the Molsons Bank, of the value of \$160,000, yet it does not appear that by the division of the estate any portion of the said stock was allotted to the share of the said appellant, nor that the said 148 shares ever formed part of those belonging to the estate of the late John Molson, and that therefore the said 148 shares in the Molsons Bank are not subject to the said condition of *insaisissabilité* mentioned in the testator's will, and the contestation of the said appellant is unfounded in respect of said shares ;

"And considering that as regards the said lot of land No. 185 of the cadastral plan of the west ward of the city of Montreal, the sale made on the 15th of June, 1871, must be taken in connection with the *partage* of the estate of the late John Molson passed on the same day, and must be considered under the provisions of Art. 747 of the Civil Code as part and portion of the *partage* of the estate of the late John Molson, and that the said lot of land has not ceased to form part of that portion of the real estate of the estate of the said late John Molson which was allotted to the said appellant by the said *partage* ;

"And considering that the rents of the said

lot of land are, under the provision of the will of the said late John Molson and by virtue of Articles 558-632 of the Code of Civil Procedure, exempt from seizure (*insaisissables*) ;

"And considering that the appellant is by law authorized to invoke the nullity of the seizure made in this cause of the rents of the said lot of land ;

"And considering that it is unnecessary for the determination of the present contestation to enter into the examination of the other questions raised by the pleadings, and that there is error in that part of the judgment rendered by the Superior Court on the 30th of June 1881, in dismissing the contestation of the said appellant as regards the seizure in the hands of the said Allan Freeman of the rents of the said lot of land ;

"This Court reforming the said judgment of the 30th of June 1881, doth reject the contestation of the said appellant of the attachment made in the Molsons Bank as regards the 148 shares in the capital stock of the said bank by the said appellant held in the name of "Alexander Molson in trust for A. A. M. et al.," and doth declare the *saisie-arrêt*, attachment made by the respondent in the hands of the Molsons Bank of the dividends accrued or to accrue on the said shares good and valid, and doth upon to declare what sums are or will become due to the appellant on the said shares ;

"And this Court doth maintain the contestation of the said appellant of the attachment made by the said respondent in the hands of the said Allan Freeman of the rents accrued and to accrue on the lease of the said lot of land No. 185, of the West ward of the city of Montreal, doth quash the said attachment, and doth grant *main levée* thereof ;

"And the Court doth condemn the appellant to pay to the respondent the costs incurred in the Court below on the attachment made in the hands of the Molsons Bank, and doth condemn the said respondent to pay to the appellant the costs incurred on the attachment in the hands of the said Allan Freeman and of the contestation thereof, as well as the costs on the present appeal."

In Nos. 432 and 433 the judgment was confirmed (Monk, J., dissenting), on the ground that appellant had not shown any interest in the sums of money attached in the cause. \*

Barnard, Beauchamp & Creighton for Appellant.

Abbott, Tait & Abbotts for Respondent.

S. Bethune, Q.C., and Pagnuelo, Q.C., counsel for respondent.

\* An appeal is pending before the Privy Council.