

any person deputed by him, the sheriff of the district in which such public work or building is situated, shall, immediately after the service of the Order in Council aforementioned, under a warrant signed by the Lieutenant-Governor, be bound to seize such public work or building and to maintain the Commissioner or any person deputed by him in the possession thereof."

It was contended on the part of Mr. Macdonald that the Government could not avail themselves of this Statute, as the railway was a federal work, and the authority of the Federal Legislature would be necessary to permit the Government to take possession.

The warrant having issued, Mr. Macdonald, by his counsel, applied in Chambers to Mr. Justice Rainville, of the Superior Court, for an injunction to stop the proposed seizure of the road. The Judge ordered the injunction to issue. It is said, but we do not know on what authority, that His Honor's attention had not at this time been called to the clauses of the Statute cited. The injunction was disregarded by the Government, and Mr. Macdonald was dispossessed by force. It was at this stage that an application was made by Mr. Macdonald to have the Government Engineer and the Sheriff, the officers executing the orders of the Provincial Government, committed for contempt. Mr. Justice Johnson granted the application as far as Mr. Peterson was concerned, but relieved the Sheriff (*ante*, p. 446). At the same time His Honor rejected an application from the other party to revise the order for the injunction, the ground being that while the party was in contempt he could not be heard on the principal case. From this decision the Government obtained leave to appeal to the Court of Queen's Bench (*ante* p. 448). This did not of itself suspend the proceedings in the Court below (see Injunction Act of last session); but the Court of Appeal, on a proper application being made, exercised the discretion accorded to it by the Act of last session, and suspended all proceedings until December 14, (*ante* p. 461).

This outline of the proceedings, imperfect perhaps in some respects, will serve to make the judgments which we have published clearer to the general reader. The story breaks off here, and, happily, there is no "to be continued" at the end of the chapter. It must be an immense satisfaction to us, amid the noise

of strife of this nature, to know that we have a Bench that may be depended on. If ever we are able to appreciate an untrammelled, incorruptible, and thoroughly independent judiciary, it is when large interests are at war, and the extreme remedies of the law are brought into play on one side or the other. It is a time when unshaken adherence to principle shows in bright contrast with judicial action influenced by personal or partizan feeling, such as might perhaps be looked for in an elective judiciary, but of which, under the superior institutions which we enjoy, not a trace exists—at least, let us think so.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, Sept. 9, 1878.

RAINVILLE, J.

KNOX V. LAFLEUR.

Procedure—Faits et Articles—Commission Rogatoire—Art. 221 C. P.

Held, 1. A party has not the right to examine his adversary *sur faits et articles* before trial.

2. Where the plaintiff has inscribed the case for proof and final hearing, a notice served by defendant upon the attorney of his absent adversary two days before the date fixed for trial, for *faits et articles* on the day of trial, is in time; and if there is no apparent attempt to retard the trial, the court will grant such application, notwithstanding the words in Art. 221 C. P.,—"Without retarding either trial or judgment."

3. When the attorney of an absent party, upon whom an order for *faits et articles* has been served, indicates the residence of his client (Art. 223) and his option to have him examined by commission at such place, the commission will be at the diligence and expense of the party requiring the interrogatories.

R. A. Ramsay for plaintiff.

Doutre, Doutre & Robidoux for defendant.