motion of the appellant for leave to appeal to Her Majesty in Her Privy Council, with costs."

Abbott, Tait, Wotherspoon & Abbott, for appellant.

E. Carter, Q.C., for respondent.

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MONTREAL, Sept. 22, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER, SICOTTE, JJ.

McINNES et al. (plffs. below), Appellants, and VEZINA et al. (defts. below), Respondents.

Sale by Sample—Retaining part of goods (where the purchaser refused to accept goods as not equal to sample) as security for freight.

Sir A. A. DORION, C.J., said that this was an action brought by the appellants, D. McInnes & Co., for the price of goods sold to the respondents, Vezina & Bedard. Upon receiving the goods, consisting of a number of pieces of tweed, Vezina & Bedard immediately wrote to McInnes & Co., that the goods were not according to the sample which had been shown to them, and refused to accept them; and they inquired of McInnes & Co., in what manner they should return them. Not receiving any answer, or receiving an evasive answer, they returned the goods through the Express Company, with the exception of one piece which they retained, on the ground that having paid something for freight, they were entitled to keep one piece of the goods as security for the repayment of the freight. The Court below decided that the goods were not according to sample, and the action was dismissed. The Court here considered that the judgment appealed from was correct in holding that the goods were not according to sample. Then, there was another question—whether Vezina & Bedard having kept one piece of goods as security for the repayment of the freight, they had thereby lost their right to complain. The Court here was of opinion that, under the circumstances, there had been no acceptance of the contract in part. The contract was repudiated for the whole, one piece alone being kept as a pledge that the defendants should be reimbursed what they had paid for freight.

RAMSAY, J., concurred in the judgment simply on the ground that there was a conflict of evidence, and under the circumstances this Court did not think proper to disturb the decision of the Court below.

Judgment confirmed.

Davidson, Monk & Cross for appellants.

Beique & Choquet for respondents.

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SIR A. A. DORION, MONK, TESSIER, CROSS, JJ.

The MECHANICS BANK, Appellant, St. JEAN, Respondent, and WYLIE, intervening.

Insolvent Act as applied to Banks—Appeal under 39 Vict. c. 31, s. 12—Procedure to be followed —Interlocutory Judgment.

Sir A. A. DORION, C. J., said the Mechanics' Bank had stopped payment some three or four months ago. The Banking Act declares that the charter of a Bank is forfeited after the lapse of 90 days after suspension of payments, and by 39 Vict., c. 31 it is provided that after 90 days' suspension of payments the provisions of the Insolvent Act of 1875 shall apply to Banks, subject to the provisions contained in the 147th section of the Act, and also subject to the provisions of the 39 Vict., c. 31. St. Jean, a creditor of the Bank, after the 90 days had elapsed, applied to the Court for a compulsory writ of attachment, to put the Bank into insolvency. The application was contested by the Bank, and the Judge in the Court below, acting under sub-section 4 of section 147, which authorizes the Judge to order a meeting of creditors to be called, directed that a meeting should be held to consider whether the business should be wound up, or should be continued. From this judgment the Mechanics' Bank had taken an appeal *de plano*, without applying to this Court for leave to appeal. St. Jean had proceeded no further, but allowed the appeal to go on without interference on his part. Then Wylie, one of the creditors of the Bank, filed a petition, alleging that he is interested, being a depositor, and asking to be permitted to intervene, in order to have this appeal quashed as having been taken without right. The application was resisted by the Mechanics' Bank, which alleged that Wylie had no interest in the case, and contended moreover, that the Bank had a right to appeal *de plano*. The question