

the recent statute—cases now heard before the division of this Court known as the Summary Cases Court. When these cases leave the court of summary procedure, and come here, we have no power of making our procedure any more summary than it already is in all other cases. We can hear counsel upon them, and decide them; that is all. Therefore the suggestion that this is still the Superior Court, which in a sense is true, is beside the question, for there is no procedure possible in any case here which differs in one case from what it is in another. There are cases again where the law has given precedence to them over all other cases, as in the case of elections of members of Parliament which concern the interests of the whole people. But apart from summary proceedings, where they exist, and precedent right of being heard over other cases, where such a right as that exists, I know of no law authorizing us to give a right of being heard to one person more than to another contrary to the order of the roll. In what are called summary cases, the object of the law is to shorten the proceedings; not to give a preferential right to be heard. The cases in which we have been accustomed to give precedence, apart from election cases where the law expressly prescribes it, have been cases where, *ratione materiæ*, such as the liberty of the subject, as in cases of *capias* where the party is in prison, or cases where an immediate and exceptional interest exists for a speedy decision—such as in the case of leases of houses, expulsion, etc.

It was said that the Court of Appeal has decided the question. I have not been able to verify that, but even if it has, it is certain that the law has given to us, and not to the Court of Appeal, the right to regulate our practice here.

An observation, (I will not call it an argument but a suggestion *ab inconvenienti*) was made to the effect that the numerous cases now disposed of in the summary court would all come here for delay to be had so cheaply for the debtor and so disastrously for the creditor. But what, if all those cases should come here for that object, as there is good reason to fear that a full half of all cases do

already? In the first place, they are of a nature to be disposed of promptly; and in the next place, the evil will not be so great as if we gave them precedence, which would block the general roll and give debtors in ordinary cases incalculable and unjust delay. But an abuse of this description would be easily cured; and if we found it to exist we could easily have a day or an hour devoted to cases in the summary court. I can see, however, no justification for us to prefer one litigant over another, where the law does not require it.

Motion dismissed without costs; case put on ordinary roll.

*Tailon, Bonin & Dufault* for plaintiff.

*Archambault & St. Louis* for defendant.

#### SUPERIOR COURT—MONTREAL.\*

*Mandate—Bank—Action of shareholder against director—Prescription—Litigious rights—Responsibility for acts of employees.*

*Held*:—1. The action of a shareholder of a Bank against the directors, to recover loss occasioned by their gross negligence and mismanagement, being the action of mandate, is prescribed only by thirty years.

2. The action against the directors for maladministration appertains to the corporation, but in default of suit by the corporation it is competent to a shareholder to institute it.

3. Where several shareholders assign their claims to one of their number, not selling them to him, but constituting him procurator *in rem suam*, the defence of litigious rights cannot be pleaded, this form of association *ad litem*, *i. e.* the joinder of several creditors to bring a joint action against the same defendant, being recognized by the civil law.

4. Directors of a corporation are bound to exercise the care of a prudent administrator in the management of its business. Such acts as allowing overdrafts by insolvent persons without proper security, the impairment of the capital of a Bank by the payment of unearned dividends, the furnishing of false and deceptive statements to the Government, the expenditure of the funds of the Bank in illegal purchases of its own shares, are acts

\* To appear in Montreal Law Reports, 7 S. C.