

" Et a condamné et condamne le dit défendeur à payer aux dits demandeurs *es qualité* la dite somme de \$300 avec intérêt sur icelle, à compter du 17 décembre 1877, jusqu'au payement, déboutant les demandeurs du surplus de leur demande, et condamne le défendeur au dépens," etc.

Judgment for plaintiffs.

Church, Chapleau, Hall & Atwater, for plaintiffs.
Ritchie & Ritchie, for defendant.

COURT OF QUEEN'S BENCH.

QUEBEC, February, 1882.

DORION, C. J., RAMSAY, TESSIER, CROSS, and
BABY, J. J.

GAUVIN v. ROCHETTE.

Service—Writ of Appeal.

Motion to reject appeal, the service being irregular. The service was made on Malouin & Malouin, attorneys of Respondent in the Court below, by serving a copy personally on Philippe Malouin. The attorney in the Court below was Jacques Malouin, and not Malouin & Malouin, and a different person from Philippe Malouin, and not merely a misnomer. The time for appeal had elapsed.

In support of the motion the following cases were cited:—Dupuis & Dupuis, 6 L.C.R., p. 429; Leduc & Ouellett, 2 Rev. Leg. p. 626; Simard & Fraser, 1 Leg. News, 130; Johnston & Leaf, 2 Leg. News, 226; Peloquin & Lamothe, 3 Rev. Leg. p. 58.

The Court thought the case of Dupuis & Dupuis in point, and the appeal was rejected.

COURT OF QUEEN'S BENCH.

QUEBEC, February, 1882.

DORION, C. J., MONK, RAMSAY, TESSIER, and
BABY, J. J.

MCCAMMON v. MCKINNON.

Appeal—Interlocutory judgment.

Motion for leave to appeal from an interlocutory judgment, discharging the *délibéré* until it be decided whether an insolvent who has obtained a settlement with his creditors be discharged.

The appellant sued the respondent for *bornage*. When the case was ready for hearing

the respondent became insolvent, and proceedings were suspended. Subsequently the respondent obtained his discharge from his creditors which was not confirmed by the Court. The appellant then continued his proceedings *en bornage* and obtained judgment with costs. He tried to recover his costs, but was met with the objection that the respondent was not responsible for this debt, having been insolvent and discharged.

RAMSAY, J., dissenting. I would grant this motion without expressing any opinion as to the merits of the appeal. I don't think a judge has any discretion to refuse to give judgment till some future event, unless it be in the rare cases where some future fact can affect the issues. Whether respondent is discharged hereafter or not cannot properly affect the judgment to be given. At most it may aid the judge gropingly to arrive at a conclusion. It is a violation of Art. 11 C. C., and so we held in the case of Tracey et al. & Liggett et al., last term in Montreal. But it is said, the judgment in this case can do no great harm, for if the discharge is not speedily obtained the appellant can apply anew to the Court to be allowed to go on. This reason seems to me to be conclusive in favour of allowing the appeal. It amounts to this, that if the Court below persists in its present disposition, this Court will allow the appeal. Therefore the fact for which the Court below is now waiting is immaterial.

BABY, J., also dissented.

The majority of the Court rejected the motion.

Motion rejected.

MUNICIPAL ROAD.

In the case of *Price et al. v. The Corporation of Ste. Genevieve*—an appeal from Three Rivers—decided at Quebec in February last, a question of some interest to country readers was discussed. The following remarks were made by Mr. Justice Ramsay, who dissented in appeal, and concurred in the judgment of the Court below.

RAMSAY, J., (dissenting.) It appears that a passage or road existed for many years, called the *chemin du portage*. It was used by many people, but principally by appellants. There seems to have been no *procès-verbal* of the road,