

in the Division Court is brought under sec. 185, the garnishee being a party to the proceedings from the beginning, if final judgment had been obtained against the primary debtor, even though the liability of the garnishee has not been determined.

Gallagher v. Bothie, 2 C.L.J. 73. applied and followed.

W. M. Douglas, for the plaintiff.

W. H. P. Clement, for the defendant.

In note of Practice case *Sales v. Lake Erie*, for *Brown v. Dunn*, 6 P. R. 67, read *Browne v. Dunn*, 6 R. 67.

Province of Quebec.

POLICE COURT—MONTREAL.

REG. v. CHISHOLM.

Criminal law—Canada evidence Act, 1893, ss. 2, 5—When depositions in civil court receivable as evidence in subsequent criminal proceedings.

Held, 1. That depositions given before the Superior Court of the Province of Quebec (which is a court over which the Parliament of Canada has no control) may be used in a subsequent criminal proceeding against the party who made it, unless made under protest, on the ground that the answers might tend to criminate him, but the finding of the jury in the civil case is not receivable.

2. That depositions, given by the accused, in connection with the subject in question, before the Canada Evidence Act, and without any claim of privilege, are also receivable in evidence.

[MONTREAL, April 27, 1896.]

On the trial of this case *Atwater*, for the prosecution, tendered as evidence the depositions made by the accused on the trial of the case in the Superior Court.

Greenshields, for the accused, objected to this evidence, relying upon the Canada Evidence Act of 1893, sec. 5, which enacts that: "No person shall be excused from answering any questions upon the ground that the answer to such questions may tend to incriminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown or of any other person: Provided, however, that no evidence so given shall be used or receivable in evidence against such person in any criminal proceeding thereafter instituted against him other than a prosecution for perjury in giving such evidence." His contention was that a deposition given by a witness in any court whatsoever, civil or criminal, cannot be used or read against the witness making it.

Atwater, contra. The deposition sought to be introduced here having been given before the Superior Court of this province, which is under Provincial, not Federal, jurisdiction, the defendants are not protected by sec. 5, inasmuch as sec. 2 limits the operation thereof to criminal proceedings and civil proceedings, and other matters whatsoever respecting which the Parliament of Canada has jurisdiction in this behalf.