

His Honor did not think the Court was laying down an iron rule that would bind it in future. It was a matter in which the Court exercised a discretion, and each case must turn on the particular circumstances.

Judgment confirmed.

Judah & Wurtelle for Appellant.

Macmaster, Hall & Greenshields for Respondent.

POISSANT (deft. below), Appellant; and BARRETTE (plff. below), Respondent.

Alimentary allowance—The Court in its discretion may antedate the pension—Registration of tutorship.

The defendant, father of an illegitimate child, was condemned to pay an alimentary pension to support his child, of \$5 a month up to the age of 7 years, and of \$10 a month from the age of 7 years till the age of 14 years. The child, a daughter, is now 17 years, of weak intellect, and unable to gain her living. The mother, therefore, sued as tutrix of the child for an alimentary pension of \$10, to begin 5 months prior to the institution of the action. She obtained her conclusions, and the father now appeals, urging, 1st, that the tutorship of the mother was not registered; 2nd, that he ought to be tutor, and that he is willing to take charge of the child and to place her in an asylum; and 3rd, that in any case he can only be condemned to pay alimnts from the institution of the action.

The Court was against the appellant on all these pretensions. In the first place, it was not pleaded that the tutorship was not registered, and it has frequently been held that where the tutor alleges registration and it is not specially denied it will be held to be admitted. In the second place, it is no answer to the tutor who seeks for alimnts for a ward to say, "I should be tutor and I will take care of the child." So long as the tutorship subsists the tutor has a right to bring the action. Besides (remarked Mr. Justice Ramsay) we do not think the father has made out any case which would induce us to deprive the mother of the charge of a female child, who has been under her care for seventeen years, to hand her over to a father who has neglected the charge so long, and who now would place her in an asylum. On the third point there is more to be said. Usually ali-

ments are only allowed from the date of the action; but here the Court below has in its discretion allowed arrears for a very short period for which it is more than probable the mother has contracted liabilities, and we do not think under the circumstances we should be justified in disturbing the judgment. The appeal is dismissed, and the judgment confirmed.

Lacoste & Globensky, for appellant.

Loranger, Loranger & Pelletier, for respondent.

MONTREAL, Dec. 22, 1879.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, CROSS, JJ.

THE QUEEN v. JOSHUA PERRY.

Indictment for receiving stolen goods—Omission of count for larceny—Evidence of felonious receiving.

Reserved Case.

"In the Court of General Sessions of the Peace. December Term, 1879.

"The Queen v. Joshua Perry. On conviction of feloniously receiving stolen goods.

"The prisoner was indicted and tried for having feloniously received the goods and chattels described in the indictment hereto annexed, then well knowing the same to have been stolen.

"The evidence for the prosecution was to the effect following:

"On or about the 2nd day of November last (1879), all the goods and chattels enumerated in the said indictment were feloniously stolen, taken and carried away from the barn of the said Paul Marcil, erected on one of his farms, situated in the Parish of St. Hubert in the said district of Montreal, but no proof was adduced as to who committed the theft. On the 12th day of November last past, a search warrant having been issued for the recovery of the said goods and chattels, the same was executed at the prisoner's domicile in the said Parish of Longueuil, and then and there, although the prisoner denied all knowledge to that effect, all the said goods and chattels were found in the premises occupied by the said prisoner, some of them in the stable, and some of them concealed in the cellar of prisoner's house. The reins, shaft, pins, and one iron ring (*porte-faix*) of Marcil's harness were found attached to one of the prisoner's harnesses in prisoner's stable,