

By 47 Vic. ch. 14, sec. 2, (B.C.) it was enacted as follows:—

"From and after the passing of this Act there shall be, and there is hereby granted to the Dominion Government, for the purpose of constructing and to aid in the construction of the portion of the Canadian Pacific Railway on the mainland of British Columbia, in trust, to be appropriated as the Dominion Government may deem advisable, the public lands along the line of the railway before mentioned, wherever it may be finally located to a width of twenty miles on each side of the said line, as provided in the order in Council, section II, admitting the Province of British Columbia into Confederation."

A controversy having arisen in respect of the ownership of the precious metals in and under the lands so conveyed, the Exchequer Court, upon consent and without argument, gave judgment in favour of the Dominion Government.

On appeal to the Supreme Court, *HELD*, affirming the judgment of the Exchequer Court, Fournier and Henry, JJ., dissenting, that under the order in Council admitting British Columbia into Confederation and the Statutes transferring the public lands described therein, the precious metals in, upon and under such public lands, are now vested in the Crown as represented by the Dominion Government.

Appeal dismissed with costs.

*McCarthy, Q.C.*, for appellant.

*Burbidge, Q.C.*, and *Hogg*, for respondent.

Quebec.]

MACKINNON V. KEROCK.

*Capias*—Petition to be discharged—Judgment on—Final judgment and appealable under sec. 28 of ch. 135, R. S. C.—Arts. 819, 821, C. C. P.—Fraudulent preference—Secreting—Art. 798, C. C. P.—Promissory note discounted—Arts. 1036, 1953, C.C. (P.Q.)

A writ of *capias* having been issued against McK, under the provisions of art. 798 of C. C. P. (P. Q.) he petitioned to be discharged under art. 819 C. C. P. and issue having been joined on the pleadings under art. 820 C. C. P., the petition was dismissed by the

Superior Court. From that judgment, McK. appealed to the Court of Queen's Bench for Lower Canada, (appeal side), and that Court maintained the judgment of the Superior Court. Thereupon McK. appealed to the Supreme Court of Canada.

On motion to quash for want of jurisdiction:

*HELD*, Taschereau, J., dissenting: That the judgment was a final judgment in a judicial proceeding within the meaning of sec. 28, ch. 135, R. S. C., and therefore appealable.

On the merits it was *held per* Ritchie, C. J. and Fournier and Taschereau, JJ., That fraudulent preference to one or more creditors is a secretion within the meaning of Art. 798, C. C. P.

2. That an endorser of a note discounted by a bank has the right under Art. 1953 C. C. to avail himself of the remedy provided by Art. 798 C.C.P., if the maker fraudulently disposes of his property. (Strong, Henry, Gwynne, JJ., contra.)

*Gault v. Dussault*, 4 Leg. News, 321, approved.

The court being equally divided the appeal was dismissed without costs.

*Macmaster, Q.C.*, and *Hutchinson*, for appellant.

*Geoffrion, Q.C.*, and *Greenshields*, for respondent.

Quebec.]

BRAUDET V. NORTH SHORE RAILWAY CO.

43 & 44 Vic. ch. 43, sec. 9 (P.Q.)—Award—Validity of—*Faits et articles*—Art. 225, C.C.P.

E. B. et al., joint owners of land situate in the City of Quebec, were awarded \$11,900 under 43 & 44 Vic. ch. 43 sec. 9, for a portion of said land expropriated for the use of the North Shore Railway Company.

On the 12th March, 1885, E. B. et al. instituted an action against the N. S. Railway Company, based on the award. The company not having pleaded, foreclosure was granted, and on 21st April, process for interrogatories upon *faits et articles* was issued and returned on the 26th April. The company made default. On 18th June, the *faits et articles* were declared taken *pro confessis*. On 16th May, E. B. et al. consented that the defendants be allowed to plead, but it was