

of this Province, presented a petition to Mr. Justice Brooks at Sherbrooke, asking for an injunction against defendants. That Honorable Judge declared in writing upon the petition that he was incompetent to receive the same or to make any order thereon, as he was a Director of the Company. The petition was then, on the same day, presented to Mr. Justice Plamondon, who happened to be in Chambers, at Sherbrooke, and he ordered that a copy of the petition should be served upon the defendants, together with a copy of the order which he then made requiring them to appear before him in Chambers at Arthabaskaville, on the 20th June, to show cause against issue of writ.

The service of the petition and declaration of Judge Brooks, and the order of Judge Plamondon was duly made, and at Sherbrooke on the 2nd July following, that learned Judge ordered the writ to issue on security being given, and the writ was issued and returned into the Superior Court on the 2nd August.

The defendants thereupon filed a *défense en droit*, and other pleas, issue was joined thereon, and the defendants inscribed the case on 13th August, for hearing on the *défense en droit*, for 17th August.

On the 16th August, defendants made a petition addressed to the Superior Court, at Sherbrooke, setting forth that Judge Brooks was the sole Judge residing in that district, and was a director and Vice-President of the Company defendants, and therefore disqualified from sitting. This petition, without any previous notice or service upon plaintiff, was communicated to Judge Brooks, and he thereupon made a declaration in writing that he had received communication of it; that the grounds of recusation and disqualification therein set forth were true, and designated the district of Bedford, as that to which the record should be transmitted.

On the same day, the defendants served a copy of the petition in recusation, and of the declaration of the Judge upon the plaintiff, and gave him notice to govern himself accordingly. The record was not transmitted to this district until about the 7th of the present month. There are now two motions presented to me, one by each of the parties.

The plaintiff by his motion asks that the petition in recusation, and the declaration of the Judge thereon, be rejected from the record, and the record be transmitted back to St. Francis District, for several reasons, which may be stated in substance as these: 1st. Because Mr. Justice Brooks had already recused himself when the petition for the injunction was first presented; and the writ had been granted by Judge Plamondon at Sherbrooke, who was seized of the case and still is seized with it in the District of St. Francis. 2nd. Because the petition in recusation had been filed without notice to plaintiff. 3rd. Because the defendants having inscribed the case for hearing on the *défense en droit* this court could not hear it, and moreover defendants had by inscribing waived their right to have the record brought here.

The Counsel for the plaintiff urged in support of his motion that the defendants being aware of the declaration made by Judge Brooks *in limine litis*, they were bound under Art. 181 C. C. P., to proceed within eight days to have the declaration acted upon, and having failed to do this they are now too late. He contended therefore that Judge Plamondon who granted the writ at Sherbrooke, on the 2nd July, is still seized with the case: that no new declaration of disqualification could be made by Judge Brooks after eight days from service of first declaration upon the defendants: that no petition in recusation could be based upon any subsequent declaration, and that all the proceedings in recusation are null, and the case is now pending at Sherbrooke, before Mr. Justice Plamondon, or any other Judge who may happen to take it up and hear it there.

The defendants by their motion ask that the grounds of recusation be declared well founded, and that the Prothonotary of this Court be ordered to forthwith place the cause upon the roll in the same manner that it was when transmitted from St. Francis District, and that the Court or Judge thereof do forthwith proceed and adjudicate upon all proceedings in the cause to final judgment. I will deal with the motions in the order stated. [The learned Judge here read the Articles of the C. P. 178-184.]