COURT OF REVIEW.

MONTREAL, Sept. 30, 1881.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From S. C., St. Francis.

In re MCLELLAN, insolvent, HALE, petitioner, and MCLELLAN, Respondent.

Review—Deposit—Writ of possession.

The review was from a judgment of the Superior Court, St. Francis, (Doherty, J.), July 2, 1881.

JOHNSON, J. Hale, the petitioner, was *adjudicataire* of a lot of land brought to sale by the assignee of the insolvent, who could not give him possession, and Hale applied for and got a writ of possession from the Court. It is from the judgment granting the writ that the present inscription is taken, the petition having been contested on a variety of grounds, and evidence having been heard. The petitioner for the writ now moves to reject the inscription, on the ground that the deposit of twenty dollars made with the inscription is insufficient; and his contention is that under article 497 of the Code of Procedure the deposit should have been of forty dollars. That article provides that the review cannot be obtained until the party demanding it has deposited in the office of the Prothonotary of the Court which rendered the judgment, and within eight days from the date of the judgment, twenty dollars, if the amount of the suit does not exceed $400, and of forty dollars, if the amount of the suit exceeds $400, or if it be a real action, &c. The argument is that this is a real action; but we think we must look at this subject with reference to the reason of the rule, and refuse the motion. The article 497 I have given the substance of, but it adds expressly that "the amount thus deposited is intended to pay the costs of the review incurred by the opposite party." Now, the tariff provides for the costs in cases of writs of possession, they are not at all assimilated to the costs in real actions. Writs of possession cannot be said properly to be actions at all. They are awarded in execution of judgments, and they are so looked upon apparently in the tariff; see numbers 40 and 41 of the tariff as published in Foran's C. of P. So that the tariff gives in this case $18, where, if the proceeding, instead of being considered an execution, had been considered a principal action, it would have given $60. We are of opinion to reject the petitioner's motion with costs.

Brooks & Co. for petitioner.

F. O. Bélanger for respondent.

COURT OF REVIEW.

MONTREAL, February 28, 1881.

SICOTTE, PAPINEAU, JETTÉ, J J.

CHAUSSÉ v. LAREAU.

Charges de la mitoyenneté—Loss suffered by the rebuilding of a mitoyen wall.

The action was instituted by the plaintiff for $197, and was based on alleged loss and inconvenience suffered by the taking down and rebuilding of a *mitoyen* wall. It was proved at *enquête* that the proper precautions had been observed and no unnecessary delay or neglect had taken place. The action was dismissed in the court below, and the judgment was confirmed in review.

Vide: Toullier, vol. 3, No. 215; Pardessus. Servitudes, No. 166; Peck v. Harris, 6 L. C. J. p. 206. (Q. B.).

Ethier & Pelletier, for plaintiff.

Lareau & Lebeuf, for defendant.

CIRCUIT COURT.

MONTREAL, June 30, 1881.

Before RAINVILLE, J.

VICTORIA MUTUAL FIRE INSURANCE CO. v. CARPENTER.

Security for costs—Foreign company—A foreign company which has a place of business in the province of Quebec, is not bound to give security for costs in an action instituted in this province.

The defendant moved for security for costs on the following grounds:

1. Because the plaintiffs have no office or place of business in the city of Montreal and province of Quebec.

2. Because the head office and chief place of business of the said plaintiffs is situated at Hamilton in the province of Ontario, and they have no office in Montreal.

3. Because the said company, plaintiffs, is