

SUPERIOR COURT.

QUEBEC, June 30, 1886.

Before ANDREWS, J.

BARRAS V. LAGUEUX.

Marriage Contract—Substitution.

On the 5th February, 1836, by ante-nuptial contract between *Pierre Lecours dit Barras* and *Christine Lagueur*, community of property was stipulated.

That act contained, moreover, a covenant of *mutual donation à cause de mort*, expressed in these terms:—

"Et pour la bonne et sincère amitié que les dits futurs époux se portent l'un à l'autre, et pour s'en donner des marques, ils se sont fait *donation mutuelle et réciproque* au profit du survivant de tous et chacuns de leurs dits biens pour en jouir moitié en pleine et entière propriété et l'autre moitié en jouissance sa vie durant seulement, pour retourner du côté de CELUI, d'où les dits biens proviendront."

"Cette donation n'aura pas lieu, si, au jour du décès, il y a eu des enfants nés ou à naître du dit mariage."

There was no issue of their marriage; and the husband died intestate.

In the plaintiff's declaration it is not averred that any *immovable*, owned by the husband, at that time, or that he should thereafter acquire, as a *propre*, had been made a movable (*ameubli*) by that contract.

The widow, by her will, made the defendant her universal legatee and the executrix of that will.

Held:—That a substitution had not been created, and could not be created, by that covenant.

Text of the judgment:—

"Considering that, in and by the clause of mutual donation between the consorts, made in the marriage contract of the late *Pierre Lecours dit Barras* and *Christine Lagueur*, upon which the plaintiff bases his present action, no substitution is intended to be created in favor of the next of kin, or natural heirs of either of said consorts; nor would such substitution, or institution, of them as heirs, had they really intended that it should be so, be legal;

"Considering, therefore, that the plaintiff

shows no right or title in him to any portion of the property or succession of the said late *Pierre Lecours dit Barras*, this action is dismissed with costs."

J. G. Bossé, Q.C., for the plaintiff.

Darveau & Lemay for the defendant.

(J. O'F.)

SUPERIOR COURT.

BEAUCE, March 19, 1884.

Before ANGERS, J.

O'FARRELL V. DUCHESNAY.

Mining License—Navigable River.

In this case, the plaintiff averred and proved that he was in possession, as riparian proprietor, of the half bed of the *Chaudière* river, adjoining the plaintiff's land, at the place, called the "*Devil's Rapids*," where that river is unnavigable.

The defendant, then being "*Inspector of Mines for the Chaudière gold mining division*," had, within a year immediately preceding this suit, granted, to a third party, a gold mining license for a portion of the bed of that river; that license included that portion of the bed of that river, at that place, so in possession of the plaintiff.

The defendant, as a means of defence, set up and proved that he had issued such license, in obedience to an order in council of the executive government of the province of Quebec.

The plaintiff proved that the licensee, claiming, under that license, the right to mine on the plaintiff's above-mentioned portion of the bed of that river, did actually take possession of, and mine for alluvial gold on, that portion of the bed of that river.

HELD:—1. That the issue of such license, against the plaintiff's will, was a molestation of the plaintiff's possession to be condemned, and to be prohibited in the future;

2. That the defendant should be personally condemned to pay the costs of the suit.

The following is the judgment:—

"Considérant que le demandeur est propriétaire et en possession à ce titre depuis le seize Novembre, 1860, de l'immeuble suivant, savoir, &c.

(Description of the immovable.)

"Considérant qu'au dit endroit la rivière *Chaudière* n'est point navigable ni flottable