NOTES OF CASES.

MONTREAL, Dec. 17, 1879.

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

LALONDE et al. (defts. below), Appellants, and BELANGER (plff. below), Respondent.

Damages caused by cutting wood—Prescription—Art. 2261, C.C.

The appeal was from a judgment of the Superior Court, Montreal, (Papineau, J.), condemning the appellants to pay the sum of $600 damages for wood cut and taken away from respondent's land.

Sir A. A. DORION, C.J., said the Court was of opinion, on the evidence, that the judgment was well founded, and must be confirmed, (save as to one particular.) On the appeal a question of prescription had been raised, the appellants contending that the two years' prescription under Art. 2261, par. 2, applied to the case, and that all damages prior to two years before the institution of the action should be excluded. The answer to this was two-fold. In the first place, prescription was not pleaded, but the defendants had offered to confess judgment for a certain amount. In the second place, the two years' prescription did not apply to a case like this, where it was the price and value of the wood that was claimed. This Court had so held in *Bulmer & Dufresne*, and that judgment had been confirmed by the Supreme Court.*

Judgment confirmed.

Duhamel, Pagnuelo & Rainville for Appellant.
De Bellefeuille & Turgeon for Respondent.

DUFRESNE (claimant in Court below), Appellant, and THE MECHANICS BANK (contestant below), Respondent.

Contestation of claim in insolvency—Contestant must show an interest.

The appeal was from a judgment of the Superior Court, Sherbrooke, Doherty, J., 29th May, 1878, maintaining the contestation of a collocation in favor of appellant and Rev. J. B. Chartier, in a dividend sheet prepared by the assignee *in re* Lemieux, insolvent. By the collocation Dufresne and Chartier were collocated on registered hypothecary claim for the full balance in assignee's hands, $2,072.80. The contestation was made by the Mechanics Bank on the ground that the hypothec in favor of Dufresne and Chartier was granted for a pre-existing debt at a time when the Rev. J. O. Leblanc, who granted it, was notoriously insolvent, and the mortgagees knew the state of his affairs.

The judgment maintaining the contestation was in these terms :—

"The judge having heard the parties respectively by their counsel, on the merits of the contestant's contestation of the collocation made by the assignee in favor of the said Reverend A. E. Dufresne, and examined the proceedings, *pièces produites*, and proof of record and deliberated ;

"Seeing that the mortgage contested in this matter, upon which the collocation now contested is based, was given on the eighth day of May, in the year 1874, and that the Reverend J. O. Leblanc, the mortgagor, within thirty days thereof i. e., to wit, on the fifth day of June, in said year, made a sale or transfer of his property equivalent to a *cessio omnium bonorum* to Lemieux, the insolvent in this matter, who did not pay and had not the means of paying for the same nor of paying the debts of the said Revd. J. O. Leblanc thereby and by the deed thereof by him assumed ;

"Considering that the said contesting party has established by legal parol evidence as well as by said transfer so made within thirty days of the date of such mortgage, that the said mortgagor was, at the date of said mortgage, in insolvent circumstances, and that it is also established by such parol evidence by the deposition as a witness in this matter of the Reverend A. E. Dufresne, one of claimants collocated, and the reasons by him therein given for taking a mortgage for $6,000 to cover a debt of $3,000, that the claimants feared and believed that said mortgagor was then insolvent, and that they had then probable cause for believing him unable to meet his engagements and to be so insolvent ;

"Considering that the granting and accepting of said mortgage under the circumstances established in evidence on this contestation gave, and by said collocation gives to the claimants an undue and illegal preference over

* Decided in 1879. Not yet reported. See 21 L.C.J. 98.