

NOTES OF CASES.

SUPERIOR COURT.

[Practice Division.]

MONTREAL, June 9, 1879.

MACKAY, J.

DESJARDINS V. OUMET, and PERRAULT, T. S.

Appeal—Saisie-Arrêt—Suspension of Proceedings.

The defendant (June 6), petitioned that *mainlevée* be granted of the *saisie-arrêt* attaching moneys due to him in the hands of Perrault the garnishee, and that the garnishee be not required to make any declaration. The plaintiff having obtained a judgment against the defendant on the 30th of April last, issued a *saisie-arrêt* in the hands of the garnishee on the 16th of May. The *saisie-arrêt* was returned on the 30th of May. Before the return, viz, on the 20th of May, the defendant had taken an appeal from the judgment, and security was duly given in the presence of plaintiff's attorney on the 23rd of May. Under these circumstances, the defendant claimed that he was entitled to have *mainlevée* of the seizure.

MACKAY, J. The law says the appeal suspends proceedings upon the judgment, whether the proceedings be by execution or by *saisie-arrêt*. The defendant thinks that he ought to have *mainlevée* of the *saisie-arrêt*, which, however, was well issued at the time the writ was taken out. Can I grant this petition, which asks a good deal? Can I say more than the law says, viz., that the proceedings are interrupted, that the plaintiff's rights of execution are suspended, and have been, by the security given, and notice of it? No. Matters must remain in the same condition until the appeal is decided.

Motion rejected: "the Court holding that the appeal referred to suspended and suspends the plaintiff's proceedings, leaving all in that condition in which it was at the time of the appeal commencing its suspensive effect, but no more."

L. O. Taillon, for plaintiff.

B. A. T. de Montigny, for defendant.

EVANS ES QUAL V. GENEREUX.

Insolvent Act, 1875, Sect. 16—Powers of Interim Assignee—Authorization to sue.

The interim assignee, Evans, having, four days after the estate was placed in his hands under a writ of compulsory liquidation, instituted an action in his quality of assignee to the estate of Papineau & Archambault, to recover a sum of \$3,000 due to the insolvents, the defendant filed an exception *à la forme*, alleging that inasmuch as the plaintiff came into Court only in his quality of assignee *ad interim* of the insolvents, he had no right, under section 16 of the Insolvent Act of 1875, to institute any proceeding without having obtained the order or authorization of the Court, and it did not appear by the writ of summons or by the declaration, that the plaintiff had obtained such order or authorization.

MACKAY, J. The allegations of fact in the exception stand admitted by the inscription for hearing thereon, without *enquête*. The case of the plaintiff therefore fails, the exception being fatal to it. Section 16 of the Insolvent Act of 1875, shows very clearly that the assignee *ad interim* does not possess the power exercised here, of bringing suit without permission of the Court or Judge. The exception is therefore maintained, and the action dismissed.

Duhamel, Pagnuelo & Rainville, for plaintiff.

Geoffrion, Rinfret & Dorion, for defendant.

CADIEUX V. CADIEUX.

Pleading—Producing an acquittance where general issue is pleaded.

The plaintiff moved that a *quittance* produced by defendant as his exhibit No. 1, entitled a *quittance* by Esther Cadieux (the plaintiff), to Ferdinand Cadieux (the defendant), be rejected as irregular, inasmuch as the defendant had merely pleaded a *défense en fait*, and plaintiff further alleged that if the *quittance* remained in the record, he would be forced to take other proceedings apart from this suit, the notary Brunet, before whom the *quittance* was passed, having acted improperly in concert with defendant.

MACKAY, J. I do not think the general issue permitted the defendant to file such a *quittance* as this. It is an *acte* in notarial form, in the nature of *transaction* and final discharge. In