

nard. Si ces derniers n'avaient pas d'enfants mâles, il choisirait alors parmi les enfants de ses sœurs un garçon qu'il instituerait son héritier à la condition que ce dernier prenne le nom de Pinsonneault, qu'il lui suffise, dans le choix qu'il fera d'un héritier, de bien remplir mes intentions, qui sont de conserver pour toujours intacte dans la famille cette propriété à laquelle je suis si attaché pour les raisons ci-dessus déclinées.

XVII. Article explicatif. Mon fils aîné Charles-Alfred partagera également avec ses sœurs et frères dans tous mes autres biens, en sus de mes propriétés à la Tortue que je lui lègue pour les causes ci-dessus mentionnées à l'article XVI.

Mon second codicille en date de ce jour, vingt-huit Novembre 1872. I. Il sera loisible à mon fils aîné, Charles-Alfred, de transmettre mon domaine de la Tortue ci-dessus mentionné à celui de ses enfants qu'il en jugera le plus digne.

I am of opinion that a substitution has been created by the above words. Precatory words are often equivalent to a command. Redfield—Wills, §43, n. 9. Lewin—Trusts, p. 104. Poth. 6, 326. Domat, 506, n. 13. Legs à la volonté de l'héritier. Furgole 2, 142, 3. 2 Story—Equity Jurisp. § 1068—74. Troplong, Donations, 1, 275.

Petition granted.

Roy & Archambault, for petitioner.

C. A. Geoffrion, J. E. Robidoux, for Pinsonneault.

JOSEPH V. SMITH.

Saisie-gagerie par droit de suite—Rent not yet due.

The defendant occupied the house of plaintiff from 1st May, 1878, to 1st May, 1879, by sufferance. In the beginning of May, 1879, he left the premises, and the plaintiff immediately sued out a *saisie-gagerie par droit de suite* to secure the rent for the year beginning the 1st May, 1879. The demand was that the seizure be declared valid, and that the defendant be condemned to pay the rent, namely, \$240.

The defendant pleaded that he began to occupy the house in 1877, and that such holding terminated by consent of plaintiff in November, 1878, by his allowing defendant to move into another house in Union Avenue, defendant complaining that the house on University street was un-

healthy; that afterwards, in January, 1879, defendant gave notice to plaintiff that he would vacate the shop-part of same house in University street in May, 1879, which plaintiff agreed to do; that no rent was due to plaintiff when the action was taken out.

TORRANCE, J. Defendant attempted to prove that he had given notice by witnesses that he would give up possession in May, 1879, but he failed in this proof. I find, therefore, under C.C. 1608, 1609, 1657, 1663, that he is liable for the value of the house for a year; but as the year has not terminated, I have difficulty in giving a money condemnation at this date, or before the termination of the year. The Court overrules the plea of the defendant, save as to the rent not being due by defendant when the action was taken out, and maintains the seizure for the rent which shall have accrued on the 1st May, 1880.

Judah & Brancaud for plaintiff.

H. W. Austin for defendant.

COURT OF REVIEW.

MONTREAL, March 31, 1880.

JOHNSON, TORRANCE, LAFRANBOISE, JJ.

GIRARD v. BANK OF TORONTO.

BANK OF TORONTO v. GIRARD.

[From S. C., Montreal.

Bank—Resolution of Board of Directors communicated to their Solicitor—Incomplete Contract.

The judgments brought under Review were rendered by the Superior Court, Montreal, Mackay, J., Nov. 29, 1879.—See 2 Legal News, p. 406.

JOHNSON, J. These are cross cases: one of them brought by Girard to get a condemnation against the Bank to sign and complete an *acte* before a notary, granting terms of payment of a large sum of money he owed the Bank; and the other by the Bank against Girard for the amount he owed them. We unanimously confirm both judgments—the one that dismissed Girard's action, and also the one that condemned him at the suit of the Bank. The parties were negotiating with respect to terms of settlement, and many details had to be considered before a contract could be finally completed; and the question for the Court in both cases was purely a