

classes of fees, in order to combat any distinction that might be attempted to be established between them.

MONDELET, J., said he had to interpret the statute judicially, and that he found it applied to every one, and that no exception was made as to the Queen.

RAMSAY, to clear away that difficulty at once, would answer the learned Judge by citing 2 *Duarris*, p. 668, who says, "It is the rule that the King shall not be restrained of a liberty or right he had before, by the general words of an act of Parliament, if the King is not named in the Act." The clause 9 said that these fees should be taxes "payable to the Crown."

AYLWIN, J., cited the maxim "*Ecclesia ecclesiam non decimat.*"

DUVAL, C. J. The question is simply this, has anybody an interest in the Crown paying these fees?

RAMSAY.—No; The Officers of Justice in Montreal are paid wholly independently of these fees. He was quite prepared to admit, that if an interest had been created in favor of any officer it would be a sufficient reason to make the Crown pay; but there was not now any such right. In conclusion, he would resume that the fee sought to be recovered, belonged to the Officers of Justice fee fund, and that therefore no question could arise as to its being part of an appropriated fund; that by Section 9, these fees formed part of the revenue of the Crown, and that to force the Queen to pay for stamps was to force the Queen to pay the Queen; that Sections 12, 13, 15 and 29 all showed that the Statute did not intend, much less declare, that the rights of the Crown should be cut off; and finally, that the fines for not using stamps were payable totally to the Receiver-General for the general uses of the Province, and the prosecution was to be at the instance of Her Majesty's Attorney or Solicitor-General. In other words, that if the Queen did not pay a tax to the Queen, the Law Officers of the Crown should prosecute the Law Officers of the Crown, and the fines should be paid to the Receiver-General.

MARCHAND, Dep. Clerk of Appeals, resisted the motion. There might be contingent interests in these taxes reaching a certain amount; and at all events the balance of the Officers of Justice fee fund would go to the fund for the erection and repair of Court Houses and goals if it exceeded what was required to pay all the Officers of Justice.

DUVAL, C. J.—But are any of your salaries dependent on these fees?

MARCHAND.—Not directly.

RAMSAY.—We have nothing to do with indirect interests. The only persons who seem to have any interest, are the persons appointed to sell stamps; but their interest can hardly be considered as affecting the question.

DUVAL, C. J.—Certainly not. But what is the rule followed elsewhere as to charging these stamps?

RAMSAY.—They are not charged in the Police Court.

MARCHAND.—I was informed that they were. They are at all events charged.

RAMSAY.—The fees payable by the Crown have always been charged because the Clerk of the Crown had a percentage on them. It was one of the crimes charged to Mr. Delisle that he had charged these things, and it appears that the practice is continued even to the present day; but having been daily in the Police Court for the last three months it is certain that the stamps are not affixed in Crown cases.

The Court took the motion *en délibéré*, and no decision has yet been rendered.

LAW JOURNAL REPORTS.

COURT OF QUEEN'S BENCH—APPEAL SIDE—JUDGMENTS.

MONTREAL, December 7th, 1865.

PRESENT: Justices Aylwin, Meredith, Mondelet and Loranger

MENECLIER DE MOROCHOND, (defendant in the Court below), appellant; and GAUTHIER, (plaintiff in the Court below,) respondent.

HELD.—That prescription does not run against the wife's claim for reprises matrimoniales while she is under marital authority.

This was an appeal from the judgment of Mr. Assistant Justice Monk, rendered 27th Nov., 1864. The action was brought by the plaintiff, Ed. D. Gauthier, as universal usufructuary legatee of Marie F. Gauthier, for the amount of her reprises matrimoniales and dowry, and also for an account of the community alleged to be subsisting between her and her husband, Meneclier. The judgment awarded the plaintiff \$3,023 as the amount of the reprises matrimoniales, and \$2,242 for what Marie F. Gauthier had inherited from her father, together with \$500, the amount of her *douaire préfix*; but held that the community between Meneclier and his wife had been dissolved.

LORANGER J., (who sat in this case as judge *ad hoc* instead of Mr. Justice Drummond) rendered the judgment of the Court of Appeals, unanimously confirming the judgment appealed from, the grounds of which were briefly as follows: By the contract of marriage between Meneclier and his wife, dated 18th July, 1822, it was stipulated that there should be community between them. There was stipulation *de propre des biens de la future* to be established by inventory within fifteen days from the date of the marriage contract. It was, moreover, agreed by the marriage contract that there should be a *douaire préfix* of \$500. By judgment of the King's Bench, 8th June, 1826, a separation of property between Meneclier and his wife was pronounced. Madame Meneclier renounced to the community 15th June, 1826, and on the 19th Feb., 1826, the report of the