goods, but kept them separate; that when Hynes found that the goods had been taken out of the cases he said he would not keep them, and refused to allow his clerks to mix them with his stock or to break in on the lots, but ordered them to be kept separate, and that they should be returned to McIntyre & Co. The goods were then put back into their cases, and the next day, 20th March, returned to the railway, addressed to McIntyre & Co., at Montreal, and were delivered to them on the 24th March. Hines was put into insolvency on the 27th March.

The judgment was in these words:—

"Considérant qu'aux termes de l'Article 1543 du Code Civil du Bas Canada, le vendeur non-payé a droit d'exercer l'action en résolution de vente;

"Considérant que le dit James Hynes à qui les marchandises en question avaient été vendues, les a reçues dans son magasin, sans les déballer ni les développer;

"Considérant qu'il est prouvé qu'il les a mises à part et ne les a pas exposées en vente, mais au contraire, a donné ordre à ses commis de ne pas les vendre;

"Considérant que le dit James Hynes a renvoyé les dites marchandises aux dits défendeurs immédiatement après leur réception et que, par ce fait, la vente a été résolue d'un commun consentement, ce que les parties avaient alors le droit de faire; maintient le plaidoyer des défendeurs," &c.

TORRANCE, J. The intention of the vendee to take possession is a material fact. *James* v. *Griffin*, 2 M. & W. 623. So in *Whitehead* v. *Anderson*, 9 M. & W. 529, Parke, B., said the question is *quo animo* the act is done. In the present case, the judge has found that the insolvent, whose clerks received the goods, did not accept them. On the contrary, being apprehensive of insolvency, he kept them separate and returned them to the vendor. The Court has held, on the facts stated by the witnesses before it, that the intention of the insolvent was against acceptance, and the construction put upon the acts of the insolvent by the Court was a most reasonable one, and entirely uncontradicted. As to the goods for which the defendants have confessed judgment, the only value put upon them is sixty-three cents in the dollar on the original cost. On the whole, the conclusion of the Court here is that the judgment is correct.*

T. P. Butler for plaintiff.

L. N. Benjamin for defendants.

CIRCUIT COURT.

MONTREAL, March 21, 1881.

Before JETTE, J.

PATENAUDE et al. v. MCCULLOCH.

Practice—Tax on filing pleas.

The defendant (in an action under $25) moved for a rule against the Clerk of the Court, who refused to receive a plea to the merits without a stamp of 30 cents, although the defendant had already paid 30 cents on filing an *exception à la forme*.

Held, that in actions of $60 and under, the tariff requires the payment of one fee only on the filing of pleas to the action, and where such fee has been paid on the filing of an exception *à la forme*, or other preliminary plea, no further fee is exigible on the pleas to the merits subsequently filed.—*Thibault* v. *Coderre*, 15 L.C.J. 330, followed.

Motion granted.

J. G. D'Amour, for defendant moving.

J. L. Archambault, for clerk of Court.

RECENT DECISIONS AT QUEBEC.

Superintendent of Public Instruction, Authority of—Mandamus.—La maison d'école de l'arrondissement No. 1 de la paroisse de St. Jean île d'Orleans, étant devenu vieille et insuffisante, les commissaires décidèrent de la rebâtir au même endroitet passèrent, le 31 Janvier, 1877, une résolution à cet effet. Plus tard, ils adoptèrent une nouvelle résolution tendant à acheter le vieux presbytère pour y établir la maison d'école. Ces procédures furent désapprouvées par le surintendant, et le 23 Janvier, 1879, les commissaires adoptent une nouvelle résolution autorisant le président et le secrétaire à acheter une autre maison, ce qui fut fait.

Appel de cette procédure fut interjeté devant le surintendant, qui par sa sentence du 19 Mars, 1879, cassa la résolution du 23 Janvier, et ordonna la construction d'une maison d'école

* *Vide* Benjamin on Sales, 2nd Ed., p. 402-3, 708-9, 711; *Henderson* v. *Tremblay*, 21 L.C.J. 24; *In re Hatchette & Gooderham*, 21 L.C.J. 165.