

after a long argument by Mr. Benjamin on behalf of the petitioner, their lordships (Lord Selborne being the President) refused to grant leave. The principal, in fact the only ground relied upon by the counsel for the petitioner, was the difference of opinion amongst the judges of the lower courts as to the Election Act of 1874 being constitutional or unconstitutional, and the desirability of having this point decided by Her Majesty in Council so as to put an end to the conflict of opinion. Lord Selborne, in delivering judgment, said that there was nothing before their lordships to lead them to suppose, neither did they think that the judges who refused to act would fail to assent to the unanimous finding of the judges composing the Supreme Court, and that therefore there seemed no especial reason why leave to appeal should be given. His lordship then went on, contrary to our expectation, to consider whether the Act of 1874 did infringe upon the rights of the Provincial Legislature under section 92 of the Act of 1867. After complimenting Mr. Benjamin, and expressing his opinion that even if an appeal had been allowed and the point had been fully argued at the hearing, it was doubtful whether anything more could have been said upon the subject, his lordship said that the committee were of opinion that the Act of 1874 was constitutional and within the powers conferred upon the Dominion Parliament by the Act of 1867. That that Parliament having the power to appoint a new court for election matters, had done so by nominating the different courts specified in the Act, or any of the judges thereof, to constitute that court. In fact, that the distinction between the Act of 1873 (which has not been disputed), and the Act of 1874, was little more than this, viz., that by the former any of the judges of the different courts were formed into the Election Court, and by the latter Act the courts or any of the judges thereof. Moreover, that the care which was taken in prescribing the mode of procedure clearly showed that the court constituted was a new one, for had the Act merely added to the jurisdiction of the old courts all these special rules would have been unnecessary.

(Signed.) Yours truly,

BISCHOFF, BOMPAS, BISCHOFF & Co.

To J. Langlois, Esq., Q.C.

NOTES OF CASES.

MONTREAL, Dec. 17, 1879.

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

MONTRAIT (deft. below), Applt., and WILLIAMS
(plff. below), Respdt.

Attorney—Rights of plaintiff's attorney after plaintiff and defendant have agreed to settle the suit without costs.

The judgment appealed from was rendered by the Superior Court, Montreal, JOHNSON, J. (see 1 Legal News, p. 339, for report of the case in the Court below).

The text of the judgment was as follows :—

"The Court having heard the parties by their counsel upon the defendant's motion filed on the 3rd of December last, (1877), praying for act of record of the production made by him of an authentic copy of a deed passed before Mtre Jobin, Notary, on the 20th November, 1877, by which plaintiff discontinues, but without costs, her action in this cause, and also for act of record of defendant's consent to said discontinuation of the suit, without the condition imposed by Article 450 of the Code of Civil Procedure, of the payment of costs; having examined the proceedings and deposition of said defendant, and deliberated;

"Considering that it appears from the evidence of the defendant himself that the said deed was procured from his wife under circumstances that show his object and design were to defraud the plaintiff's attorneys, who never received any notice of the arrangement thereby made;

"Doth grant act, purely and simply to said defendant, of said production of deed and of his consent to said discontinuation of action, which said action is hereby declared to be terminated and at an end, but on payment of plaintiff's costs by said defendant, *distrains* to Messrs. Macmaster & Hall, attorneys for said plaintiff."

The appellant (defendant) complained of the condemnation to pay costs. The attention of the Court was also directed to the fact that plaintiff's attorneys had been substituted in the case for others, and were entitled to costs only from the time they came into the record.

Sir A. A. DORION, C. J., rendered the judgment of the Court, confirming that of the Court below. The appeal involved a question of