

CITIZENS INSURANCE COMPANY, Appellants, and
THE GRAND TRUNK RAILWAY CO., Respondents.

Postponement of case where counsel is detained elsewhere by serious cause.

Wotherspoon, for appellants, applied (June 11) to have this case, which stood tenth on the roll, postponed, with consent of parties, to Thursday, the 17th instant, in consequence of the inability of the Hon. J. J. C. Abbott, appellants' counsel, to be present before that date, he being detained at another place by an election trial, in which his return to the House of Commons for the County of Argenteuil was being contested.

Sir A. A. DORION, C. J., (June 14) said the Court had granted an application where the circumstances were somewhat similar, one of the attorneys being unavoidably absent. The bar loses nothing by such an application, as it does not ask that the case be called out of its turn, but only that it reached before Thursday next, it should be postponed to that day. There was no objection, therefore, to the application, except the inconvenience of such motions, if they should become numerous. Under the special circumstances stated, the application would be granted, but the decision must not be taken as a precedent for granting such motions in all cases.

Abbott & Co. for appellants.

Macrea for respondents.

SUPERIOR COURT.

MONTREAL, June 12, 1880.

THE HERITABLE SECURITIES AND MORTGAGE INVESTMENT ASSOCIATION (Limited) v. RACINE, and BOURBONNIERE, assignee, petitioner, and GILMOUR, sequestrator, petitioner.

Insolvent Act—The appointment of an assignee to a defendant against whom a hypothecary action is pending does not revoke the appointment of a sequestrator pending such hypothecary action.

The facts showed that on the 12th of August last, the petitioner, Gilmour, was named by this Court sequestrator, to administer and collect the rents and revenues of certain real estate of defendant, which was by the deed of obligation transferred to plaintiffs, and which rents formed part of plaintiffs' security for the amount claimed by them from defendant. On the 16th January last, a writ of attachment under the Insolvent

Act was issued against the defendant, whereby his estate was attached, and on the 5th February last, the petitioner Bourbonnière was named assignee of the estate. The petitioner Gilmour complained that the assignee was interfering in his gestion as sequestrator, and asked for an order against the assignee, ordering him to desist from his interference. The assignee presented a similar petition, complaining of Gilmour, the sequestrator, and praying for a similar order against him.

TORRANCE, J. The facts being admitted as stated, the question is a very simple one, whether the assignment has had the effect of revoking the appointment of the sequestrator. The obligation is peculiar in that it has transferred future assets, namely, rents and revenues, and I do not see that the action of the sequestrator in the interest of the plaintiffs should be interfered with by the insolvency, unless the Court be asked to revoke and cancel the appointment of the sequestrator. It is true that he is appointed pending the suit, but it is not alleged or proved that the suit is terminated. The sequestrator also relies upon the 16th section of the Insolvent Act, which transfers to the assignee the rights as enjoyed by the insolvent. I see no difficulty in the fact that the sequestrator, and not the plaintiff, presents the petition. The sequestrator is abundantly interested in the performance of his own duty, and may and should complain of any interference. On the naked facts put before me I see that the sequestrator Gilmour is entitled to the conclusions of his petition, and for the same reason the assignee's petition should be dismissed. I would remark further that it does not appear by the petition of Gilmour that it is made in the Insolvent Court, though such is the fact. On the other hand, the petition of Mr. Bourbonnière is in the Court of Insolvency. I doubt much whether the Court, in insolvency, has any right to coerce the officer of the Superior Court appointed in an ordinary action. The assignee can present his petition in the suit in which the sequestrator has been appointed, and have an order if entitled to it. But the Court in insolvency has no jurisdiction over Mr. Gilmour.

J. L. Morris, } for sequestrator Gilmour.
W. B. Lambe, }

Ethier for assignee Bourbonnière.