

our readers are already familiar with the salient features of Mr. Pagnuelo's propositions. We defer for the present a more particular notice of the work, but we take this occasion to commend it to the attention of the bar, and especially of those who have seats in our Legislature.

### NOTES OF CASES.

#### COURT OF QUEEN'S BENCH.

MONTREAL, JUNE 22, 1880.

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

THIBAUDEAU et al. (contestants below), Appellants, & BEAUDOIN (creditor collocated below), Respondent.

*Bank—Cashier taking hypothec to protect his endorsement of notes held by the Bank—Contestation of collocation.*

*The cashier of a Bank, who has endorsed notes for a customer of the Bank, may, if in good faith, take a hypothec on the debtor's property to protect himself on the endorsements.*

The judgment appealed from was rendered by the Court of Review, Montreal (Sicotte, Torrance, Rainville, JJ.), Dec. 29, 1879, reversing a judgment of the Superior Court, Montreal (Mackay, J.), Sept. 13, 1879.

The question was as to the right of the respondent Beaudoin to be collocated on a mortgage given by the insolvent Trudeau. The assignee of Trudeau had collocated Beaudoin for \$870, on a mortgage, but afterwards, learning that this claim was based on notes, and suspecting that Beaudoin was a mere *prête-nom* for La Banque de St. Jean, which had already been collocated on the same notes, the assignee contested the collocation, and Mackay, J., rendered the following judgment maintaining the contestation:—

"The Court, etc.,

"Considering that the obligation attacked as having no consideration is found to have none in respect of which Beaudoin personally ought to be collocated;

"Considering that if Beaudoin had been holder, at the opening of this bankruptcy of Alexis Trudeau, of the notes endorsed by him

(Beaudoin) for Alexis Trudeau, he would have had right, which, seeing that he was not holder of them, he cannot be admitted to have had at the bankruptcy, for double ranking cannot be allowed; the Bank of St. Jean was owner and holder of the notes of the bankrupt endorsed by the claimant Beaudoin, and has proved upon them, the claimant himself swearing to their claim; as to the cause of the obligation attacked, it must be held to be only that stated in claimant's letter of 29th September, 1878; this, taken with the other facts now apparent, and the claim by the Bank of St. Jean, shows that claimant has no right as against the contestation by Thibaudéau and others;

"Considering the material allegations of contestation proved;

"Doth maintain the contestation of the collocation of said claimant Beaudoin, and said collocation attacked is annulled with costs against the claimant Beaudoin, and doth order the assignee in this matter to make a new distribution of collocation according to law."

In Review, the above judgment was reversed for the following reasons:—

"Considérant que Beaudoin, en obtenant de Trudeau garantie hypothécaire, à raison de billets endossés pour ce dernier, a agi pour son intérêt personnel;

"Considérant que, lors de la faillite de Trudeau, la dette ainsi garantie par ce dernier en faveur de Beaudoin n'était pas acquittée;

"Considérant que la banque de St. Jean est créancière de Trudeau pour les billets susdits qu'elle a escomptés;

"Considérant que la banque n'est colloquée que pour sa proportion comme créancière chirographaire à raison des billets en question;

"Considérant que Beaudoin a droit d'être colloqué pour sa créance hypothécaire, moins la somme accordée à la banque de St. Jean;

"Considérant qu'il n'est pas prouvé que le créancier colloqué soit le prête-nom de la banque de St. Jean;

"Considérant, en supposant même que telle preuve serait faite, qu'il est prouvé que le failli était endetté envers la dite banque avant la passation de l'obligation sur laquelle est basée la réclamation du dit créancier colloqué, et que sa collocation est bien fondée;

"Considérant que Beaudoin, comme endosseur de ces billets, est débiteur de la banque pour la