

a mortgage, by which the borrower, Alexander Molson, became bound to repay that sum in six years, and also to pay interest, half yearly, at the rate of $7\frac{1}{2}$ per cent. per annum; and, in security for the due payment of principal and interest, mortgaged and hypothecated a lot of ground and a tenement erected thereon, situated in St. James Street, Montreal. Thereafter, on the 17th of April 1877, in consequence of default in payment of interest, Carter recovered judgment in the Court of Queen's Bench against Molson, founded on his personal covenant in the deed of mortgage, for \$31,125, being the amount of principal and interest due at 1st January 1877. In virtue of that judgment, Carter proceeded to attach, by writ of Saisie-arrêt, the rents of the mortgaged property in St. James Street, which had been let to one Allan Freeman, and also the dividends which had accrued or might accrue upon 148 shares of the stock of Molsons bank, which stood in the books of the bank, in the name of "Alexander Molson, " in trust for Eliza A. Molson *et al.*"

The right of his creditor to attach these rents and dividends was contested by Alexander Molson, upon the allegation that the St. James Street property, as well as the bank stock, formed part of his one-fifth share of the residue of the estate of his late father, John Molson; that, by the will of the deceased, his right to both was *grévé de substitutions*, in favour of his wife and family, and his usufruct was expressly declared to be *legs d'aliment*, and not arrestable for his debts. In the course of the litigation which followed, two separate petitions were presented for leave to intervene, the one by Eliza Ann Holmes, wife of the debtor, in her own right, and the other by the same lady as tutrix *ad hoc* to their minor children, along with their daughter Elizabeth, who had attained majority.

In the Superior Court, Mr. Justice Papineau, upon the 30th June 1881, rejected the contestation of the judgment debtor, with costs, and sustained the right of the arresting creditor, both as to rents and dividends; and, at the same time, in both applications for intervention, the learned Judge decided, with costs, against the petitioners. The Court

of Queen's Bench, upon the appeal of Alexander Molson, by their judgment rendered on the 24th March 1883, in substance affirmed the decision of Mr. Justice Papineau, so far as concerned the dividends, which they declared to have been validly arrested in the hands of the bank; but reversed his decision, in so far as it related to the rents of the St. James Street property, and quashed the attachment made in the hands of Allan Freeman. The debtor was condemned to pay to the arresting creditor the costs of the contestation with regard to the bank dividends in the Court below; whilst the creditor was condemned to pay to his debtor the costs of the contestation in the Court below with regard to rents, as well as the costs of the Appeal. By a separate judgment of the 24th March 1883, the Court of Queen's Bench, in the appeals taken by the intervening petitioners, rejected their contestation, and confirmed the decision of Mr. Justice Papineau, with costs.

Against these judgments four separate appeals have been presented to Her Majesty in Council. Mr. Carter complains of the decision of the Queen's Bench, in so far as it reverses the judgment of the Superior Court and quashes his arrestment of the rents of the St. James Street property; Alexander Molson complains of decisions of the Courts below sustaining the writ of Saisie-arrêt as regards dividends arising upon the 148 bank shares; and the intervening petitioners complain of the decision by which their respective contestations have been rejected. These appeals have been consolidated, and heard as one cause, but must now be separately disposed of, inasmuch as they do not depend upon the same considerations either of fact or law.

To begin with the rents of the St. James Street property. It was argued for the appellant Carter that there has been no deed or document registered which constitutes a legal act of substitution, or, in other words, discloses the fact that the title of his debtor to that property is derived by testamentary gift from his father, the late John Molson, and is therefore affected by the conditions and limitations appearing in the will of the deceased. It was said that, *ex facie* of the register, the property is vested in Alex-