

He brought his action for the value of the use of his rights as riparian proprietor, by the defendant who moored his raft opposite the plaintiff's property. I have no doubt whatever that he could relinquish for a consideration the right to the free use of the beach in so far as it might be impeded by this raft. With regard to the amount, there is \$10 a month asked; but the action was taken on the 26th June, 1878, and the value is asked at \$10 a month from the 1st June, 1875, up to the 1st June then *last past*, which, of course, would mean up to June 1877 only—making two years instead of three that are asked. Then the evidence shows that it is the custom not to charge for the winter months, which would leave only two seasons of six months each. Besides, this appears reasonable and right in itself, for in winter the proprietor relinquishes nothing, and the raftsmen gets nothing appreciable. Therefore, judgment will go for \$120 and costs. As to the attachment, there it is; it was issued, and it is not contested. I see no affidavit on which it issued, and probably one was necessary, but it was only necessary for the issuing of the writ. Once that the writ has issued, it can only be set aside by a proper form of contestation. Therefore it must be held good.

[In review, the judgment was reformed, 9 July, 1879, and defendant was condemned to pay \$174.10; each party to pay his own costs, the plaintiff's declaration having through ambiguity misled the judge of first instance.]

Macmaster & Co., for plaintiff.

Abbott & Co., for defendant.

AMOS v. MOSS et al.

Pleading—Renunciation of prescription by payment.

JOHNSON, J. The firm of A. & E. Amos, which failed and made an assignment, is now represented by the plaintiff under a re-assignment to him of the estate, and he brings his action now alleging that A. & E. Amos, on the 20th March, 1876, being indebted to the defendants in the amount of some over-due notes which the defendants had discounted, gave them, as collateral security, a draft on Quebec for \$915.75. That all the notes for which this draft was given as security have been paid; and, in the meantime, the defendants having

collected the draft wrongfully keep the proceeds, and it is for the amount of the draft that the action is brought. The plea is, that the draft was given in part settlement of an old balance due the defendants, and which they insisted on settling before they would discount the notes. The answer is general. At the argument it was contended that the defendants' pretensions were bad in law, because the old claim which is said to have been settled by this draft, and by a further payment of \$200 in cash, was in fact an undue preference given on the occasion of a previous failure of the plaintiff's firm; and it was also said that the debt of the plaintiff's firm, on account of which the plea alleges this draft to have been given, was prescribed, and that therefore the plaintiff can repeat the amount as in the case of a payment prohibited by law; but there is nothing of all this in issue by the record. There is no special answer setting up a first insolvency, and the consequent nullity of the transaction on account of its being an illegal preference; and there can be no doubt, whether prescription is regarded as a presumption of payment as under the old law, or as an absolute extinction of the debt, under the new, it can be renounced. The plaintiff had to prove his case as alleged—i. e., he had to prove that the draft was given as a collateral security only, and he has failed to do so. I think all the matters alluded to in the evidence were irregularly gone into under the issue as it stands. I see evidence of a settlement of accounts offered by the defendants, and objected to; but it is not necessary to go into that, as the plaintiff has failed to make out a case. Action dismissed.

[The above judgment was confirmed in Review, 9 July, 1879, Mackay, Torrance, Papineau JJ.]

Loranger & Co., for plaintiff.

Dunlop & Co., for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, December 14, 1878.

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

BOARD FOR THE MANAGEMENT OF THE TEMPORALITIES FUND OF THE PRESBYTERIAN CHURCH OF CANADA IN CONNECTION WITH THE CHURCH