

and that the said property should be sold for the purpose of satisfying the said lien, and that the defendant, having been granted liberty by the said decree to bid at the said sale, purchased the property as the highest bidder, and thereby became the lawful owner thereof.

Held, on demurrer, that the plea was bad in that it did not allege that the plaintiff was a party to the suit wherein the decree was made.

M. G. Teed, for plaintiff. *Geo. G. Gilbert, Q.C.*, for defendant.

Full Bench.]

EX PARTE SAGE.

[Nov. 11.]

Assessment—Certiorari—Bond under Con. Stat., c. 100, s. 110.

The applicant was assessed on the property of a fishing club in Restigouche County, on which he had paid the assessments for several years previously. He was a non-resident and obtained a rule nisi for a certiorari to bring up the last year's assessment, but did not enter into a bond as required by above act.

Held, on motion to make absolute the rule nisi, that a bond was not necessary where the assessment was absolutely void.

McLatchey and Stockton, Q.C., in support of rule. *W. A. Mott*, contra.

Full Bench.]

EX PARTE SMITH.

[Nov. 11.]

Absent debtor—Sufficiency of affidavits as to absence—Meaning of "indebted" in Con. Stat., c. 44, s. 3.

A County Judge issued a warrant against the property of S. as an absent debtor under Con. Stat., c. 44, s. 3, on the application of C., who produced his own affidavit, in which the absence of S. from the province was clearly deposed to, and the affidavit of his attorney, in which the latter set forth that he had been informed by S.'s wife that S. had left home, and that she had been communicating with him in the United States by letter. An application was made for a supersedeas under sec. 10, which the judge after hearing refused. The debt, on which the proceedings were founded, although contracted before the debtor left the province, and more than six months before the application for the warrant, had not been due six months prior to the application.

Held, on motion to make absolute an order nisi for certiorari to bring up the warrant, *McLEOD and LANDRY, JJ.*, dissenting, that the Court, although not deeming the affidavit verifying the debtor's absence satisfactory, would not treat it as insufficient, the County Judge having accepted and acted upon it.

Held also, that it was sufficient that the debt was contracted more than six months prior to the application, though not due for that period.

Order nisi discharged.

W. B. Chandler, in support of order nisi. *A. R. Slipp*, contra.

Barker, J.]

KING v. KEITH.

[Nov. 15.]

Mortgage—Interest—Rate.

The proviso for the defeasance of a mortgage was as follows: "The full sum of \$225 in four years from the day of the date hereof with lawful interest on the same, at the rate of nine per centum per annum, payable annually on