By these proceedings a surplus of between two and three thousand dollars was realized by the liquidators, who had obtained full discharges to the society from the members so compounding, and in consequence of the surrender of a great number of the books of the non-borrowing members, those remaining were reduced to a very small number. Under these circumstances the present respondents sued out a mandamus directed to the appellants as liquidators, requiring them to distribute the surplus among those who remained members of the society, consisting of the petitioners and some others of the non-borrowing members who had not discharged their interest or retired from the society. To this the appellants have pleaded that there was an agreement that the surplus should be divided among the borrowing members. This the petitioners deny, and allege that they never agreed to any such distribution, and it was not in the power of the liquidators to make such conditions, which raises the question: Had the liquidators by the winding up Acts 42 Vic., c. 48, 42 and 43 Vic., c. 32, and the Statute of Quebec 42 and 43 Vic., c. 33, power to compound? Was the exercise of that power as practised by them in this case *ultra vires?* There is nothing in the proceedings referred to, to show that the non-borrowing members were ever consulted or ever gave their consent to relinquish their claims to the surplus. The borrowing members, carrying with them the rights of many non-borrowing members, formally agreed to discharge the Society. These discharges are not impugned or complained of as being made in error, or subject to be set aside for any cause warranted by law, and were executed posterior to the pretended agreement. In such a matter non-borrowing members could not have their rights forfeited even by a resolution of a meeting of all the shareholders, nor without the specific consent of each, much less by a resolution of the borrowing members. The liquidators had power under the winding up Acts to compound with debtors of the Society, but they could not force creditors to diminish their demands.

A further still stronger reason is, that the liquidators were all borrowing members save one only, viz., Lunny, and he consented to the petition of the respondents.

It is true that another of their number was both a non-borrowing and a borrowing member, but even taking out his name it left the majority borrowing members. It was illegal for them to vote on such a question in their own favor, and the law would hold their votes a nullity. See Brice on Ultra Vires, p. 867, and the case of Atwool v. Merryweather, L. R. 5 Equity, p. 464.

If parties who have rights find they have been excluded, the judgment in the present case would not necessarily destroy their recourse. The appellants show no grievance, and as regards them the judgment should be confirmed.

DORION, C. J., and MONK, J., dissented.

Judgment confirmed.

Doutre & Joseph for appellants.

Doherty & Doherty for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, March 24, 1883.

DORION, C. J., MONK, RAMSAY, CROSS & BABY, JJ.

(No. 431) MOLSON (contestant below), Appellant, and CARTER (plaintiff below), Respondent.

(Nos. 432 & 433) HOLMES, Appellant, & CARTER, Respondent (two cases).

Will—Property declared insaisissable.

Where property was bequeathed with the condition that it should be unseizable, and was substituted to the children of the heirs, and the executors sold a portion to one of the heirs, held, that the effect was to make a partition, and the revenues of said property were unseizable.

The contestations arose in this way:—In 1875, the appellant, Alexander Molson, was desirous of effecting a loan for $30,000, and he offered as security certain property in St. James street, occupied by one Freeman as tenant. He applied, in the first instance, to the agent of the estate Masson, but the matter having been referred to the solicitors of the estate, the latter reported that the security was unsatisfactory, as, in their opinion, the property was entailed in favor of Molson's children. Shortly afterwards, Molson obtained the $30,000 from the respondent, represented by the Hon. J. J. C. Abbott, the security for the loan being the above mentioned property. Some time subsequent to