

Mitchell & Burke.—Mitchell having failed to give Burke, his landlord, due notice of his desire to terminate the lease of a house, paid the next year's rent under protest, and then sued the landlord for the amount, on the ground that he had violated his agreement to do his best to obtain a tenant. Judgment dismissing the action was confirmed, the Court holding that there was no proof of fraud on the part of the landlord.

LEONARD, *ex qual.* & WARD.—Judgment for respondent on a note confirmed.

STEWART & EVANS.—Judgment reducing the bill of appellant, an assignee, for services as receiver of an insolvent estate, from \$467.73 to \$120, was confirmed.

FARMER & DEVLIN *et al.*—Judgment dismissing an action by Farmer to rescind sale of real estate by O'Neil, one of the respondents, to Devlin, was confirmed. O'Neil had previously sold the property to Farmer, but the Court found no proof of collusion on the part of Devlin.

LAVIGNE & VILLARS.—Judgment awarding Villars \$132 as the price of six sewing machines sold to Lavigne, was confirmed.

PARKER & LATOUR.—Judgment, awarding respondent \$50 damages for gravel carried away by appellant from the beach close to respondent's house, was confirmed.

THE ST. LAWRENCE SALMON FISHING COMPANY & McKAY.—Judgment condemning appellants to pay respondent a balance of \$444.44, in accordance with the report of Mr. Archibald McGowan, accountant named by the Court, was confirmed.

Montreal, Dec. 21, 1877.

Present.—Chief Justice DORION, Justices MONK, RAMSAY, TESSIER, and CROSS.

GRAFFTIS and SLEEPER.

Decision in insolvency—Appeal therefrom—38 Vict., c. 16, s. 128.

Held, that the term of eight days, within which, under Section 128 of the Insolvent Act of 1875, proceedings in appeal or revision must be prosecuted, applies to judgments in Review as well as to those of the Court of first instance.

Appeal dismissed.

Simpson et al. (defts. below), Appellants; and *Youn et al.* (plffs. below), Respondents.

Action—Revendication—Sale by Collector of Customs.—31 Vic. c. 6, ss. 13 & 14.

A collector of Customs, by error, sold by public auction for unpaid duties, goods which had never been taken to the examining warehouse, or kept therein a month, as required by 31 Vic. c. 6, ss. 13 & 14, but had been warehoused by the harbor master for unpaid harbor dues. *Held*, that the sale was a nullity, and action of revendication by the purchasers was dismissed.

The respondents by an action of revendication, claimed 172 crates of bottles and flasks under the following circumstances. The goods came out to Montreal, and were placed on the wharf, but the harbor dues not being paid, the harbor master had the crates taken away and put in a warehouse until the dues should be paid. The Collector of Customs, supposing that they had been sent to the Customs' examining warehouse, caused them to be advertised and sold at auction, in the ordinary course, as goods on which the customs duties had not been paid. Meanwhile the agent of the consignors paid the harbor dues, and the goods were left in the warehouse subject to his order. The customs duties were not paid at the time of the sale. The purchasers at the auction sale brought an action of revendication, claiming the goods as their property. The Superior Court declared the *saisie revendication* good and valid, and ordered the defendants (the collector Simpson, and the warehouseman Morin) to give up the property, or pay \$2,000 for the value thereof.

In appeal this judgment was reversed by the majority of the Court, (Dorion, C. J., Tessier and Cross, J. J.). The sale by the Collector of Customs was held a nullity, the goods never having been in his possession, and not having been kept for a month in the examining warehouse, as required by 31 Vic. c. 6, ss. 13 & 14. The majority of the Court, (Monk and Ramsay, J. J.), considered that the sale took place under the circumstances contemplated by the law, and that the fact that the goods were not actually in the examining warehouse during the month previous to the sale made no difference.

Judgment reversed.

Geoffrion, for Appellant Simpson.

Durand, for Appellant Morin.

Doutre & Co., for Respondents.

COURT OF QUEEN'S BENCH.—APPEALS.—SIDE.

Quebec, Dec. 7th, 1877.

Present.—DORION, C. J., MONK, RAMSAY, TESSIER and CROSS, J. J.