

said capacity of assignee, and having reference to the disposal of the assets of the said insolvent estate;

"And considering that there is error in the judgment rendered by the said Superior Court sitting in matters of insolvency on the 23rd of December, 1879;

"This Court doth reverse the said judgment, and proceeding to render the judgment which the Superior Court should have rendered, doth declare the sale of the stock in the said R. & N. A. Co. null and inoperative, and doth condemn the said respondent in his said capacity to pay to the appellants out of the funds of the estate the said sum of \$2,000, with interest from this date and costs of both Courts (Cross, J., dissenting)."

Judgment reversed.

*Abbott, Tait, Wotherspoon & Abbott* for appellants.

*Geoffrion, Rinfret & Dorion* for respondent.

#### SUPERIOR COURT.

MONTREAL, Nov. 8, 1880.

**Ex parte McLAUGHLIN, petr. for certiorari, LALONDE et al., J.P., McMASTER et al., distrayants, and SOUCHEREAU, opposant.**

*Certiorari—Service upon Prosecutor—Costs.*

*The prosecutor cannot, upon a petition for writ of certiorari, be condemned to pay costs, unless he has been made a party to the proceedings.*

Souchereau, the opposant, was the prosecutor in certain proceedings before Justices against the petitioner McLaughlin, in which the latter was condemned to pay a fine of \$3 and costs. He then petitioned for a writ of certiorari, and the conviction was quashed, Souchereau being condemned to pay costs. Subsequently, an execution having issued for these costs against his effects, he filed an opposition, alleging that he had never been made a party to the cause, nor called upon to answer any of the proceedings; that no service of the writ of certiorari or of any of the other proceedings in the cause had been made upon him, and he was left in ignorance of the proceedings until his effects were taken in execution.

The petitioner answered that it was not necessary that the opposant should be served with a copy of the writ of certiorari, or that he should have notice of the proceedings.

CHAGNON, J., maintained the opposition, the judgment being as follows:—

"Considérant qu'il appert par toute la procédure dans l'instance du *certiorari*, dans laquelle instance jugement fut rendu condamnant l'opposant à payer les frais, que jamais, ni avant ni après l'émanation du dit bref de *certiorari*, l'opposant n'a été rendu partie dans l'instance, en y ayant été appelé;

"Considérant que c'est un des premiers principes de l'ordre judiciaire que personne ne peut subir de condamnation, ni être privé d'aucuns de ses droits, sans qu'il ait été mis à portée de se défendre;

"Considérant en conséquence que le jugement rendu dans la dite instance de *certiorari*, condamnant l'opposant à payer les frais accusés sur la dite procédure, n'est pas justifié, et doit être déclaré sans effet et non avenu quant à lui dit opposant, et considérant que l'opposition faite à l'exécution du dit jugement par l'opposant, tiers non partie à la dite instance, doit être déclarée bien fondée;

"Déclare la dite opposition bien fondée, déclare le dit jugement non avenu et sans effet contre l'opposant, quant à la partie d'icelui jugement prononçant une condamnation en frais contre le dit opposant; déclare l'exécution faite du dit jugement, à la demande des avocats distrayants contre les biens du dit opposant, de nul effet et illégale, et en conséquence déclare la saisie pratiquée sur les meubles du dit opposant en vertu du dit jugement, nulle et non avenue, et en donne mainlevée au dit opposant, le tout avec dépens contre les avocats distrayants, messieurs Macmaster, Hall & Greenshields, &c."

*Davidson, Monk & Cross* for opposant.

*Macmaster, Hall & Greenshields* for petitioner and distrayants.

MONTREAL, Nov. 8, 1880.

**CARDINAL V. DOMINION FIRE AND MARINE INSURANCE CO.**

*Fire Insurance—Breach of Condition—Leaving premises unoccupied.*

*The insured cannot recover upon a policy which contains a condition making the contract void if the premises be left unoccupied for more than fifteen days without notice to the Company, and it appear that the premises were vacant at the time*