

serious still is the fact that the status of an English judge has notably declined. The great augmentation in the number of judges, the divisions of the courts into upper and lower ranks, the abolition of peculiar courts, and the modern habits of the judicial body, have concurred to extinguish that rare and almost sacerdotal dignity which from an early period of our history had clung to the King's judges. They are now regarded as magistrates—respected but not revered."

REPORTS AND NOTES OF CASES.

COURT OF REVIEW.

Montreal, April 30, 1878.

TORRANCE, DORION, PAPINEAU, JJ.

THIBAudeau *et al.* v. JASMIN & GENDRON.

[From S. C. Richelieu.

*Affidavit for Writ of Compulsory Liquidation—
Security held for Debt.*

Held, that it is not necessary that the affidavit under Section 9 of the Insolvent Act of 1875 should state that the debt is not secured.

The defendant Gendron complained of a judgment rendered against him by the Superior Court, Richelieu District, for \$827. The proceedings began by the issue of a writ of compulsory liquidation. The defendant, among other objections, urged that the affidavit under which the writ issued, was null, as it omitted to state what guarantee was held by the plaintiffs for their debt.

TORRANCE, J. There are several judgments of the Superior Court in which this objection was made: *inter alia*, *Barbeau v. Larochelle et al.*, 3 Q. L. R. 31; but the judgment in that case was reversed in appeal, and is reported at p. 189 of same volume (1 LEGAL NEWS, 178.)

Judgment confirmed.

E. Lareau for plaintiffs.

Barthe & Co., for defendant Gendron.

TORRANCE, DORION, RAINVILLE, JJ.

MARIN v. BISSONNETTE, & BISSONNETTE, opposant.

[From S. C. Iberville.

Donation, Mode of Questioning Validity of.

Held, that a deed of donation may be set aside on contestation of the opposition filed by the donee invoking such deed.

The plaintiff, in order to obtain payment of a money condemnation against the defendant, took in execution a piece of land which was in contest in the case. The opposant, daughter of defendant and living with him, claimed the land as her property under a deed of donation from her father, 15th August, 1876. The plaintiff contested the opposition, and demanded the nullity of the donation on the ground of fraud against the creditors of the donor. The contestation was maintained by the Court at Iberville.

TORRANCE, J. There are two points of importance in the case. The opposant contends that the contestation comes too late, owing to the opposant having obtained a prescriptive title under C. C. 1040, which requires the creditor to bring his suit within one year from the time of his obtaining a knowledge of the fraud. The Court has decided that the facts proved do not bring the case within the rule, as it is only proved that the plaintiff had heard of the transfer. We think that the judgment in this respect is unassailable. The opposant further contended that the validity of the donation could only be tested by a revocatory action. The Court on this point was also against the opposant. It was so decided long ago in the case of *Cumming et al. & Smith et al.*, 5 L. C. J., 1, where the contestation prayed that the deed should be set aside, and the conclusions were such as to enable the Court to do justice between the parties as fully as in an action purely in form revocatory or *actio Pauliana*. We see no injustice in confirming the judgment, being satisfied that the pretended deed of donation is fraudulent and should be set aside.

Judgment confirmed.

Jetté & Co., for opposant.

Doutre & Co., for plaintiff, contesting.

SUPERIOR COURT.

Montreal, April 30, 1878.

MACKAY, J.

WILSON v. CITY OF MONTREAL.

*Illegal Assessment—Action for Restitution—
Interest.*

Held, that a person who pays money for assessment under an assessment roll made by Commissioners after the time appointed for them to report, and when they were *functi officio*, is entitled to restitution.