the testator or testatrix as *expressed in the will*. There is a *usufruct* created by these wills respectively, in favor of the surviving husband or wife. Here the property is given to the *plaintiff* and *defendant* and their heirs forever, being *propre* and *insaisissable*, not liable for their husbands' debts, and to go to them and their heirs.

Does this create a substitution? A great deal of argument and reasoning might be spent upon this question, and I think Mr. Justice Johnson says rightly, *Chester* v. *Galt*, 26 L.C.J., p. 140, that "it is impossible, as "far as I am aware, for any discussion, "however extensive and profound, or for any "terms, however careful, to define perma- "nently, and to the exclusion of plausible "criticism, what disposition of property is "or is not to be called a *substitution*. Every "one acquainted with the subject knows this "much; and every one who has written upon "it shows, perhaps unconsciously, by the "immense effort at precision and finality, "that such is the case." See Pothier on Substitutions, ss. 40-42; remarks of Chief Justice Lafontaine, in *Platt & Charpentier*, 8 L.C.R., p. 492.

The authorities cited in *Phillips* v. *Bain*, M.L.R., 2 S.C. 300, go fully into this matter, and while it is admitted that under our law, in matters of doubt, substitution is favorably looked upon, still I cannot help thinking that the words, "in full property," taken in connection with the rest of the clauses of the wills of the late father and mother of the parties, do not imply an intention to create a substitution, and that the Court, in following the doctrine laid down by Pothier and by Chief Justice Lafontaine, is declaring what is the law applicable to this case. It was stated that the parties had an interest against this, that if there is a substitution, the children would inherit *par têtes*, and not *par souches*. The legacies are to the daughters and their heirs, *i.e.*, equally to each daughter, and the fact exists that each daughter has a child or children. They are each entitled to half the property, and I think plaintiff's action must be maintained in its entirety with costs.

M. F. Hackett, for plaintiff.

Hall, White & Cate, for defendant.

COUR DE MAGISTRAT.

MONTRÉAL, 21 février 1889.

Coram CHAMPAGNE, J.

FLANAGAN v. DOYLE.

Comparution personnelle—Plaidoyer sans conclusion—Frais.

JUGÉ:—*Que lorsqu'un défendeur comparait personnellement et plaide par écrit en faisant une dénégation générale, sans conclusion, ce plaidoyer est suffisant comme défense, mais le défendeur n'a droit à aucuns frais.*

L'action était sur compte pour $4.25. Le défendeur comparut par écrit et produisit un plaidoyer dans lequel il alléguait qu'il ne devait absolument rien au demandeur, et que dans tous les cas, le demandeur avait entre ses mains des effets appartenant au défendeur d'une valeur plus grande que celle réclamée par l'action, mais le défendeur ne fit aucune conclusion.

Le demandeur fit une motion prenant avantage du fait que le dit plaidoyer n'avait aucune conclusion et demandant à ce qu'il fût rejeté du dossier avec dépens.

La Cour considérant que le plaidoyer en question contenait une dénégation suffisante des faits allégués dans la déclaration, et vu que le défendeur n'était pas tenu de plaider par écrit et pouvait se présenter en Cour le jour de l'audition de la cause, nier verbalement et mettre le demandeur à sa preuve, renvoya la motion du demandeur, mais sans frais, le défendeur n'ayant droit à aucuns frais.

Motion renvoyée sans frais.

Tucker & Cullen, avocats du demandeur.

(J. J. B.)

COURT OF QUEEN'S BENCH — MONTREAL.*

Sale — Simulation — Evidence — Purchaser in good faith.

The appellant (plaintiff) sought to recover machinery transferred to one Jos. Kieffer by deed of sale before notary, on the ground that the deed was simulated, and that the

* To appear in Montreal Law Reports, 4 Q.B.