

not the same on this point, but with us the title of the Bank has been held to be that of an owner, liable to be dispossessed. I am, therefore, of opinion that the Bank may have such a right of property in the shares as to maintain an indictment charging the unlawful taking of these shares as being the property of the Bank. The Court is not now in a position to say how far the Bank may be qualified in holding these particular shares. The decision goes no further than to state that the Bank may hold such shares. Allusion was made to the latter part of Sect. 51. It is negative and does not limit the dispositions of Sect. 40. In order to avoid any possible difficulty with regard to the second point of the indictment it will be amended by adding after the words "Montreal Telegraph Company" the words "a body corporate." With regard to the third point, I do not think it is necessary to allege how the accused took and applied to his own use; nor do I think that under Sect. 82 of the Larceny Act the taking and applying must be of a thing subject to asportation. Except as to the second point, the motion will be dismissed.

No. 138. Making a false bank statement.—All the points raised on the motion to quash were settled in Cotté's case,* except the first, namely, that the Bank of Hochelaga is not described as "a body corporate." As its corporation is created by a public statute, I do not think there is much in the objection, but to avoid difficulty the words had better be added as in the other case, and the indictment so amended will stand. Motion rejected, except as to this point to be amended.

F. X. Archambault, for the Crown.

Carter, Q.C., and *Chapleau, Q.C.*, for prisoner.

SUPERIOR COURT.

MONTREAL, April 30, 1879.

ROBERTSON et al. v. SMITH et al., and FAIR, opposant.

Insolvent—A seizure of goods by unpaid vendor in hands of vendee, after the latter has been put into insolvency, is invalid, and a judgment maintaining such seizure may be set aside on opposition by the assignee.

A *saisie-conservatoire* had been issued by the

plaintiffs, as unpaid vendors, under which certain goods were seized in the hands of the defendants, the very day the latter were put into insolvency. The case went on to judgment, and the seizure was maintained. The assignee, Fair, then filed a *tierce* opposition, on the ground that he was duly vested with the estate of the defendants, including the goods seized, prior to the seizure under the writ of *saisie-conservatoire*.

RAINVILLE, J., held the *tierce opposition* to be well founded, and the judgment maintaining the *saisie-conservatoire* was set aside.

Abbott, Tail, Wotherspoon & Abbott, for opposant.
Macmaster, Hall & Greenshields, for plaintiffs.

ARCHAMBAULT V. THE CITY OF MONTREAL.

Corporation—Liability for dangerous place on street—Flaw in axle of plaintiff's vehicle.

This was an action by the plaintiff, a professional gentleman, to recover for the value of a horse fatally injured by a street accident, and also for damages to vehicle.

JOHNSON, J., who rendered the judgment, allowed \$150 for the horse, and \$20 for repairs of the vehicle, the reasons of the judgment being in the following terms:—

"Considering that on or about the 3d of November, 1878, the plaintiff was driving a horse to him belonging and harnessed to a vehicle along the course of Craig street in the city of Montreal, to wit, a public street under the defendant's control and management; considering that in the said street there had been then recently made by lawful authority a tunnel under ground and of large dimensions, and that the excavations therefor had not been sufficiently or properly filled in so as to ensure the safe passage of vehicles;

"Considering that at the particular spot alleged in the declaration as that at which the accident complained of occurred, owing to such insufficient filling up and defective ramming of the earth into the excavation made for the said tunnel, a part of the surface earth had caved in;

"Considering that while the plaintiff was driving as aforesaid the front wheel of his carriage suddenly sank and fell into a cavity caused by the fault and negligence of the defendants and their servants, in so insufficiently