prayed that they might be declared to have been the right owners of the rights and interest granted under the license to Henry Atkinson in, to and upon said lots 34, 35 and 36, and to have been so on the 17th of January, 1882; that the letters patent issued on said last mentioned date under the great seal of the province to defendant, granting to him said lots, be declared to have been obtained by fraud and imposition on the part of defendant; that plaintiffs be declared to be the owners and proprietors of the timber on said several lots; that a writ of attachment issue, &c., to attach said timber; that defendant be ordered to deliver up to plaintiffs said timber, and in default to pay $6,200, &c.

By a petition presented to the judge in chambers on the 11th January, plaintiffs alleged the foregoing facts, and further that defendant had been guilty of fraud and imposition in obtaining the issue of the location tickets in the name of the above three persons, who were mere *prête-noms* for himself, and who were at the time in defendant's employ, one as a bar-tender and the others in positions equally incompatible with that of a *bona fide* settler. That these parties named were used merely to cloak the designs of defendant and to deceive the officers of the Crown; that the lots in question were only fit for lumbering purposes and not for cultivation; that defendant was busily engaged cutting the pine timber on said lots, had constructed shanties thereon, and had men engaged carrying on lumbering operations, and had contracted with one James Maclaren to supply large quantities of pine logs to be taken from these lots. The petition prayed that a sequestrator be appointed to the lots during the suit. The petition was granted. Hence the appeal.

TORRANCE, J. The want of jurisdiction to entertain this appeal has been objected, and in support of the jurisdiction, the case of *The Heritable Securities Association* v. *Racine*, 2 Legal News, 325, has been cited. In that case we understand the Court of Review upheld the jurisdiction on the ground that the naming of a sequestrator was in the nature of a final judgment, and we concluded to follow that decision

Next, as to the nomination, by C. C. 1824 the Court may, according to circumstances, appoint a sequestrator, and by C. C. P. 876 the Court or judge may make the appointment. By C. C. P. 1038, the suit to annul the letters patent could be brought by any interested party, but this was repealed by 32 Vic., c. 11, s. 33, and the suit must now be in the name of the Crown. (Vide *Pacaud & Rickaby*, 1 Q. L. R. 245: and *Angers & Murray*, 25 L. C. Jur. 208.) The defendant now objects that, having title and being in possession, the sequestrator should not be appointed. Pigeau, 2nd vol., 345, says: "Le séquestre ne peut être ordonné lorsque l'une des parties a titre et lorsqu'elle est en possession." Laurent, vol. 27, Nos. 173 and 178, approves of this doctrine.

The defendant further objects that the titles invoked by plaintiffs, namely, the licenses to cut timber, do not give them any title to the lands over which the sequestrator is appointed. These titles give them at best the right to cut timber on the lands. But the judgment orders the defendant to give the sequestrator free possession of the land and premises in question. Seeing the title of the defendant, and that it is not now attacked by the Crown, and may never be, seeing all the circumstances of the case, we think that the petition for the sequestration should have been rejected, and we accordingly annul the order of the 11th January, and dismiss the petition of plaintiffs.

Judgment reversed.

T. P. Foran, for plaintiff.
R. Laflamme, Q.C., counsel.
L. N. Champagne, for defendant.
J. R. Fleming, counsel.

SUPERIOR COURT.

MONTREAL, March 10, 1883.

Before TORRANCE, J.

RUSSELL et al. v. MAXWELL et al.

Contract—Rescission for failure to comply with terms.

The plaintiffs in Montreal were bound by a contract to pay for the goods supplied by defendants in Scotland upon receipt of invoice and bill of lading. They failed to pay for one lot until 15 days after receipt of bill of lading. Held, that the defendants were justified in cancelling the contract.

This was an action of damages for breach of contract, brought by a Montreal firm against a Scotch firm.

There was no question as to the formation of the contract and its partial fulfilment, or as to its having been cancelled by the Scotch firm.