

The plaintiff thereupon moved, inasmuch as the husband was really a party defendant to the record and had not only been duly served with a summons himself, (although in a different quality) but had also received personal service of the writ and declaration for his wife, that the writ and declaration might be amended in such wise as to describe the female defendant as the wife of the male defendant.

Connolly
vs
Bonnevillie et al.

Per Curiam:—As the husband is really a party to the record and has received the service intended for the wife, I can see no injustice in granting this motion, but the plaintiff must of course pay the costs of the exception. The motion is therefore granted.

Motion to amend granted.

Strachan Bethune, Q.C., for plaintiff,
Dorion & Dorion, for defendants.

(S.B.)

COURT OF REVIEW, 1866.

MONTREAL, 30TH MAY, 1866.

Coram SMITH, J., BADGLEY, J., BERTHELOT, J.

No. 2.

THOMAS MCCREADY *et al.*,

APPELLANTS;

AND

ANDREW LEAMY,

RESPONDENT.

Held.—That the *onus probandi* is on the Petitioner, under sub-section 3 of section 3 of the Insolvent Act of 1864, to establish that his stoppage is only temporary and that his assets are sufficient to meet his liabilities.

This was a case in revision of a judgment rendered at Aylmer, by the Hon. Mr. Justice LaFontaine, on the 6th day of December, 1865.

The respondent had been served by the appellants, who were two of his creditors, for sums exceeding in the aggregate \$500, with a demand in the form E, under the Insolvent Act of 1864, and on the 14th day of November, 1865, the respondent presented a petition to the Judge, under sub-section 3 of section 3 of the Act, praying that all proceedings upon the demand should be stayed. In this petition the respondent in effect alleged:—

That no other demand had ever been made on him by the claimants for the amount due them except the notice already mentioned. That he was not aware of the exact amount which he owed them, or of the nature of the claim the said McCready intended to make.

That he had not, at any time, stopped payment of his debts generally, and that he had only temporarily delayed payment of the claimants' claims, and that with their consent, and whilst negotiating for accommodation.

That he was not then insolvent, and that his property would, at any time within the last six years, pay, and was worth more than five times all the debts due by him or charges affecting the same, of which he alleged the claimants