

*Extract of the Case of the Respondent.*

The parties in this cause were heard in the Court below, on the 23rd of November, 1844, and on the 27th of the same month, a re-hearing was ordered.

The re-hearing was specially confined to one point, namely, whether or not the Resident Judge of Three Rivers had the right of appointing the Respondent Executor of the late Mr. Cressé.

The Respondent then obtained a Rule to re-open the *Enquête*, for the purpose of withdrawing his Exhibit No. 3, being an imperfect copy of the *acte* of his appointment as Mr. Cressé's Executor, and to substitute in lieu thereof a correct and perfect copy ; which rule was, after hearing the parties, declared absolute on the 17th of January, 1845.

The Respondent's object in making this application, was to produce a copy of the Petition presented to the Honble. Resident Judge of Three Rivers, and of the proceedings had upon it, and thus to bring before the Court the reasons which influenced that Honorable Judge in making the appointment.

The *Enquête* was thereupon re-opened for that special purpose, and copies of Dr. Gilmore's appointment as Executor, of the Petition praying for the same, and of the proceedings had upon it, were filed.

The Petition praying for the nomination of another Executor, was presented by Luc Michel Cressé, one of the children and universal legatees of Mr. Cressé, and sets forth the nomination of Mr. Dumoulin as his Testamentary Executor, to administer the entail in favor of his grand-children ; that in and by a deed of *constitution de rente*, executed at Three Rivers, before Badeau and colleague, Public Notaries, on the 5th of November, 1827, Mr. Dumoulin, as such Testamentary Executor, had invested a sum of £300 in the hands of Louis Charles Cressé, one of the said legatees, for the payment of a certain lot of ground in Three Rivers, in pursuance of the terms and under the restrictions prescribed by Mr. Cressé's will and codicil, which sum formed part of the monies entailed, which it was Mr. Dumoulin's duty as Executor to superintend and administer ; that Mr. Dumoulin, instead of using a proper surveillance over the said sum of money, and over the property upon which it was invested, as it was his duty to do, on the contrary caused the said property to be seized and attached, at his own private suit, on the 9th day of May then preceding, and it was advertised for sale on the 15th of September then next ensuing, in a cause No. 326, to the great prejudice of the legatees, and exposing them to lose the said sum ;—that the legatees were in danger of losing several sums of money through Mr. Dumoulin's negligence in not prosecuting recent purchasers (*nouveaux détempteurs*) of property hypothecated for the payment of such sums in order to interrupt their prescription, and also in neglecting to file oppositions, when such properties were advertised for judicial sale, to the great prejudice and loss of the legatees ; that Mr. Dumoulin was even himself a debtor to the estate of Mr. Cressé in a sum of £575, as being in possession of the greatest part of the real property of the late Jean Doucet, which rendered it necessary in order to preserve the hypothec upon such property for the payment of the last mentioned sum, that the prescription should be interrupted ; that the interests of the legatees and of the executor, Mr. Dumoulin, were adverse to each other, and