

actions; but assuming that only a small percentage of the property at present in mortgage were assured with the company, the business thus obtained would yield a large dividend to the shareholders. The share capital is £2,000,000, with a first issue of a million, of which one-quarter has been subscribed by the founders, who will pay all the preliminary expenses, except law charges and brokerage.

COURT OF REVIEW.

QUEBEC, January 31, 1885.

Before STUART, CASALTY, CARON, JJ.

L'HEUREUX v. LAMARCHE ET AL.

Assignee of Insolvent Trader—Account—Pleading—Débats de compte.

1. *An assignee to whom an insolvent trader has assigned his estate for the benefit of his creditors, is personally bound to render to the insolvent an account under oath.*
2. *Pleas, first denying liability to account, and secondly, producing an unsworn account, are inconsistent.*
3. *A judgment ordering an account to be rendered is a condition precedent to a discussion of an account produced before the making of such order.*

The plaintiff, a merchant, residing at Ste. Geneviève de Batiscan, became financially embarrassed; on the 23rd September, 1882, at Montreal, he made a voluntary notarial assignment, to the defendants, of all his estate.

The defendants entered into possession of his assets and realized from the sale of such assets, \$2,200.71.

The plaintiff's pretensions are that the defendants sacrificed his assets; he claims that they sold, to one Alphonse Turcotte, for \$1,600, his stock-in-trade, which was worth \$2,825.42; and that, to the same person, they sold for \$500:

1. A building-lot with a dwelling and a store upon it.
2. A hypothecary debt for \$182.
3. Promissory notes, to the amount of \$718.20.

Mr. L. P. Guillet, a barrister of Three Rivers and a creditor of L'Heureux for \$185, became dissatisfied with the trustees' man-

agement of L'Heureux' affairs, sued the present plaintiff, and, on the latter's confession, obtained a judgment for his claim. He caused to be placed, in that suit, a garnishment-seizure in the hands of the defendants in this case.

Upon that garnishment-seizure, the present defendants made separate declarations denying their indebtedness to the present plaintiff and alleging indebtedness by him to them.

Upon contestations of those declarations, in which the amount involved in such contestations exceeded \$200, the Circuit Court, at Three Rivers, dismissed the contestations.

On the 30th April, 1883, the Court of Review, at Quebec, reversed that judgment, putting the parties out of Court, on the ground that the Circuit Court had no power to adjudicate upon that contestation, the amount exceeding \$200.¹

Shortly after the rendering of that judgment in Review, Wilbrod L'Heureux, defendant in the Circuit Court case, brought the present suit, in order to compel the present defendants to render to him in this case a judicial account of their management of his estate.

To this suit the defendants pleaded:

1. That they were not bound to render the account claimed by L'Heureux,—that such an account could only be claimed by L'Heureux' creditors,—and that they, the defendants, were not personally liable towards L'Heureux;

2. That they prayed *acte* that they had already rendered an account, sworn to, and proved, on the contestation of their declarations as garnishees, and that, by the judgment of the Circuit Court (so reversed by the Court of Review), and that there was, therefore, *res judicata* between L'Heureux and themselves.

3. That they prayed *acte* of the fact of their bringing into court in this case an account not sworn to by them.

The parties to this suit proceeded to proof and final hearing on the three issues raised by the defendants. The defendants produced the record of the case in the Circuit

¹ See *Guillet v. L'Heureux*, 9 Leg. News, 371.