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ELEVATED RAILWAYS.

The New York Court of Appeals, by four to three, has rendered a decision maintaining the rights of adjoining property owners in the streets of cities. The question was as to the erection and operation of an elevated railway. The street was one, the fee of which is in the city, the lots themselves having originally been owned by the city, and conveyed by it with a covenant that the street should continue open forever. It was held by the majority that the owners of lots on such street are entitled to have the street kept open and continued as a public street for the benefit of their abutting property; that the erection and operation of an elevated railway therein is inconsistent with the use of the street, and as to such lot-owners is a taking of private property within the meaning of the Constitution; that it cannot be permitted without compensation to them; and may be restrained by injunction. This decision was given in the case of *Story* v. *N. Y. Elevated Railway Co.*, 26 Alb. L. J. 373.

THE GROWTH OF LITIGATION.

The *Albany Law Journal* makes the remarkable assertion that the mass of litigation in the State of New York is larger than in England. It gives no explanation of a fact so startling, but positively affirms its truth. We are inclined to believe that the mass of litigation in the Dominion of Canada does not fall very far short, and possibly is equal to that of England. There is one cause which must have a great deal to do with this state of things,—we refer to the ruinous cost of litigation in England. In old fairy tales, if a person failed in something which he undertook to do, the usual penalty was the loss of his head. If the unsuccessful party in a law suit were doomed to have his head cut off, there would be a remarkable decrease of litigation. In England, if the result of failure is not quite so fatal, it is nevertheless serious enough to discourage rash ventures.

On the subject of the labor imposed on judges our contemporary goes on to observe:—"There is more work than our judges can do at all, not to say do well. The consequence is delay, vexation and loss to suitors, and frequently a less careful and considerate examination of cases than litigants have a right to expect. It is high time that this necessity should be recognized and provided for. There is in some quarters a vague sort of notion that the judges have fat places and an easy time, but nothing could be more erroneous. There is no class of men in the country more assiduous, conscientious and intelligent, and at the same time more cruelly overloaded. Health, strength and spirit give out in the hopeless and cheerless Sisyphean task."

NOTES OF CASES.

CIRCUIT COURT.

SWEETSBURGH, (Dist. of Bedford) Oct. 3, 1882.

Before BUCHANAN, J.

HENRY N. GILES ès qualités v. G. W. BROCK.

Mutual Insurance Company—Premium Note—Defence to action for assessment.

It is not competent to a person insured in a mutual company, when called upon to pay assessments on his premium note, to compel the company to enter into a detailed statement of the losses in order to establish the correctness of the assessments made by the Directors. The latter, in making the assessments, are the agents of the insured who, in the absence of fraud, is quoad *such assessments bound by their acts and by the terms of the premium note.*

The plaintiff, in his acapcity of Receiver duly appointed according to the laws in force in the Province of Ontario for the Niagara District Mutual Fire Insurance Company, brings suit against the defendant for the recovery of the sum of $48, the amount assessed on his premium note on the Policy of Insurance against fire effected by him with this Company in August, 1876. The declaration alleges that notice of

the assessments was given to him in accordance with the provisions of the 36th Victoria, chapter 44 of Ontario, and then follow allegations as to the insolvency of the Company and the appointment by the Court of Chancery of the plaintiff as such Receiver.

After a plea by the defendant putting in issue the averments of the declaration, is another to the effect that the note in question was obtained from the defendant by the fraudulent artifices of the officers and agents of the Company, who represented that it was a solvent Company, whereas at the time it was insolvent and worthless, and that it furnished no security for any loss insured against, and that defendant received no value or consideration for the note, and that (which was specially put in issue) the company suffered no *bona fide* losses for which the defendant could be made liable.

Upon these issues the parties proceeded to proof, the evidence on the part of the plaintiff being documentary, and proof of the authenticity of the documents filed being supplied by the testimony of the plaintiff. On the part of the defendant, the only witness examined was the plaintiff, no kind of written evidence being adduced by him. The evidence of plaintiff was to the effect, that the assets of the Company were equal to its liabilities, and that it was from non payment by its debtors that the Company was forced into liquidation, and that the Company was not insolvent when the premium note sued on was given, and that defendant was not assessed for any loss previous thereto; but the losses on which he was assessed were subsequent to the time his insurance was effected. The counsel for the defendant endeavoured to obtain from the witness a statement of what losses and in what manner the assessments were made on defendant's note, but the court maintained the objection of plaintiff to allowing the witness to enter into any details in regard thereto, the more particularly as the Court held he had no records or books from which to speak.

The COURT, in giving judgment for the plaintiff under the proof, held that although it might be open to a party insured to show that a company was a swindling or bogus company, and that the security sought to be enforced had been obtained by false pretences, which had not been done in the present case, yet that it was not competent to the assured in a mutual company, when called upon to pay assessments on his premium note, to compel the Company to enter into a detailed statement of the losses, to establish the correctness of the assessments made by the Directors. That the power to and that the Directors in so acting were the agents of the insured who also was a member of the Company, and that he was, *quoad* these assessments, in a suit brought to enforce payment of them, bound by their acts and by the terms of his premium note, which are here of a most specific nature, and by which he agreed to pay on demand for value received, any sum of money which the Company might from time to time *require* of him, provided that such sums should not in the aggregate exceed the sum of $96 (the amount of the premium). That, apart from the contract itself which must govern this case, to hold otherwise would appear to defeat the object of the law establishing these Mutual Companies, wherein, as in ordinary incorporated Companies, the conduct and details of the business are left to the action of Directors, who would be responsible directly for malfeasance of duty, but whose acts within their scope are binding on shareholders or members of the Company, and one of whose main duties it was, in these Mutual Companies, to make assessments for losses and other expenses of the Company.

Here, the defendant having failed to prove the fraudulent character of the Company, or the false representations upon which, it was alleged, the note in question was obtained, and a Receiver having, under the 75th section of the above-cited Act, the like rights and remedies upon the non-payment of assessments as are given to the Company itself, the right of the plaintiff to recover the amount sued for from the defendant was indubitable, and judgment accordingly went in his favour.

Judgment for plaintiff.*

E. Racicot for plaintiff.
E. Carter, Q. C., Counsel.
O'Halloran & Duffy for defendant.

* As the observations of the Court are manifestly condensed, it may be well to state that the report has the approval of the learned Judge who pronounced the judgment.—ED.

CIRCUIT COURT.

MONTREAL, Oct. 31, 1882.

Before PAPINEAU, J.

DUPUY es qual. v. UNION BANK of L. C.

DUPUY es qual. v. CHARLES N. WALTERS.

DUPUY es qual. v. OTHERS.

Insolvent estate—Recourse against creditors.

Held, that where an Insolvent Estate has no assets, the creditors cannot be called upon to pay, in proportion to the amount of their claims, a judgment obtained against the assignee of such estate.

PAPINEAU, J., in rendering judgment, stated the facts to be as follows:—

In 1876, Perkins as assignee to the estate of J. Phelan, caused an illegal seizure to be made of the goods of one Trempe.—Trempe sued Perkins, in his capacity of assignee, and obtained judgment for damages arising from this illegal seizure—and this judgment, rendered by the Superior Court, was confirmed in Review.

Trempe, after obtaining this judgment, became himself an insolvent; and the present plaintiff Dupuis, who was appointed his assignee, took out execution against Perkins as assignee of Phelan. He received a sum on account, but there being no more assets of Phelan's estate, he demands payment from the creditors of the latter; dividing the amount amongst them in proportion to their claims.

As to the Union Bank, there is no doubt that the action cannot be maintained as regards it, as it is proved that they never filed a claim, and were not in fact creditors of Phelan; the notes signed by him, and held by the Bank, being paid at maturity, by the endorsers.

In the other cases the question arises whether in law the defendants, creditors of Phelan's estate, are liable for the acts of Perkins his assignee. Perkins made an illegal seizure of the goods of Trempe. Either he made it on his own responsibility, or with the authorization, express or implied, of the defendants.

In the first case, having acted on his own responsibility, he alone will be liable.

The plaintiff makes no proof that Perkins was specially or expressly authorized to do the illegal act for which he has been condemned; there is nothing also to prove any implied authority from the defendants. Not acting, therefore, under their express, or even implied authorization, Perkins was not the agent of the defendants, and could not bind them as such.

There remains his capacity of assignee. In this capacity, of assignee to the insolvent's estate, could he bind the creditors? In order to answer this question we must consider what is an assignee under the Insolvent Law. He is an Officer of the Court,—the Act states so expressly. He also represents the insolvent, in the sense that he can exercise all the rights which belonged to the insolvent at the time of his bankruptcy, and those which may afterwards accrue to him up to the time when he ceases to be under the operation of the Insolvent Law; in a word, he is seized of all the assets of the insolvent, except those which the law declares exempt from seizure: (Insolvent Act of 1875, Sect. 16) and he is seized of them for the benefit of the insolvent and his creditors.

The assignee cannot act as attorney or agent of a creditor of an insolvent, except when authorized by a judge. (Insolvent Act, Sec. 32 and 33.)

Section 36 authorizes the creditors and inspectors to give instructions, as to the sale and liquidation of the assets of the insolvent.

Section 38 says that the assignee shall exercise all the rights and powers of the insolvent in relation to his property and estate.

The powers of the Assignee do not extend beyond the property of the insolvent; and section 125, which places the assignee under the summary jurisdiction of a Judge, or of the Court of which he is an Officer, only renders him liable to *la contrainte par corps* in respect of his duties in reference to the estate and the property of which it is composed.

The assignee only represents the insolvent in so far as regards the estate of the latter, and can only act, in reference to the same, in conformity with the law. If he acts in contravention to the law he is subject to punishment by the Court. If he acts beyond the scope of the duties which the law imposes upon him, it can only be on his individual responsibility; unless there be an authorization by the creditors, or in default of this, of the inspectors. The plaintiff does not ground his case on either one or other of these authorizations.

The assignee has no other rights, in reference

to the estate of the insolvent, than had the latter himself. He cannot bind the creditors any more than could the insolvent himself. Let us suppose that the insolvent himself, before his failure, had caused an illegal seizure to be made of the goods of Trempe; could the latter, after discussing the goods of Phelan, have a recourse against the latter's creditors? Clearly not. Why then should he have such a right, after Phelan's failure?

The plaintiff claims that, in virtue of section 39 of the Insolvent Act, the assignee is the agent of the creditors. I am not prepared to admit this. But, supposing he be, it can only be in so far as regards the property of the insolvent; for he is not charged with any other business than that of the bankrupt estate, his powers only extend to the assets of the estate; and the law empowers him to act, in the interests of the creditors, and even of the insolvent, in reference to these assets alone. He cannot bind his principals, except within the limits of his commission. There is a case, provided for by the Insolvent Act, where the creditor may be liable for the costs of proceedings instituted by an assignee, or rather in the name of the assignee. This is when a creditor is authorized, by the judge, to take some proceeding which the creditor deems to be advantageous for the estate, but which the assignee refuses to undertake. This is in virtue of section 68 of the Insolvent Act. But in this case the creditor has the sole benefit of the proceedings so taken, and which are at his own sole risk, although in the name of the assignee.

This case, where the Legislature has expressly enacted that the proceeding shall be at the risk and costs of the creditor, shows that it was not the intention to make him personally responsible under any other circumstances. Otherwise there would have been no necessity for this special provision.

The rights of Trempe, or of his assignee after his failure, could only be exercised against his debtor, against whom he obtained his judgment in damages. Now he only obtained a judgment against Perkins, in his capacity of assignee to Phelan; and, as such, Perkins could only bind the property which the law placed in his hands.

The actions of the plaintiff are therefore dismissed with costs.

In addition to the reasons given above the following authorities may be invoked, cited by the defendants' counsel:—Lees, Law of Bankruptcy, p. 215; Archbold's law of Bankruptcy, vol. 2, p. 856 & 851; Baldwin's law of Bankruptcy; Esnault, faillites et Banqueroutes, vol. 1, p. 452, and vol. 2, p. 524; Larocque-Sayssinel, faillites et Banqueroutes, t. 1, p. 441; Renouard, Traité des Syndics, p. 252. But it is to be remarked that these authorities are not to be considered as altogether applicable, without some allowance being made, especially in the case of the French authors, as they treat of a system of legislation different from ours.

Plaintiff has cited in support of his pretentions a judgment of the Honorable Mr. Justice Rainville, in the cause No. 2194 C. C. Montreal, *Poulin* v. *La Banque de St. Hyacinthe*, rendered 29th October, 1881.

I have examined the record in the above case, and find that the facts differ from those which form the basis of the actions and pleas in the present cases, though there is a certain resemblance. I have spoken to Mr. Justice Rainville in reference to the grounds of decision in this case of *Poulin*, and have been informed by him that he did not consider the case should form a precedent; and that the contrary had been recently decided by the Hon. Mr. Justice Mathieu in the cause No. 7051 C. C. Montreal, *Lepine* v. *Tremblay*.

Lareau & Lebœuf for plaintiff.

Lunn & Cramp for Union Bank.

Kerr & Carter for Charles N. Walters and other defendants.

COUR SUPÉRIEURE.

MONTRÉAL, 13 Septembre 1882.

Coram JETTÉ, J.

GILES es qual. v. CHAPLEAU.

Judicatum solvi—Défendeur esqualité.

Le demandeur poursuit esqualité et se décrit comme suit au bref de sommation: "Henry Martin Giles, de la Cité et du district de Mon- "tréal, écuier, en sa qualité de Receveur dû- "ment nommé (en exécution d'un jugement de "la Cour de Chancellerie de la Province d'Onta- "rio et suivant les lois en force dans la dite "province) à la Compagnie d'assurance mutu- "elle contre le feu du District de Niagara, corps "politique, dûment incorporé par la loi, faisant

"autrefois affaires dans les provinces d'Ontario "et Québec." Le défendeur par motion demande que le demandeur es qualité soit condamné à fournir un cautionnement pour frais, *judicatum solvi*, pour trois raisons :

1o.–Parcequ'il appert au bref de sommation que le demandeur ne poursuit pas personellement, mais en sa qualité de Receveur d'une Compagnie d'assurance de la Province d'Ontario ;

2o.–Parcequ'il ne parait pas que cette Compagnie ait un bureau d'affaires dans la Province de Québec ;

3o.–Parcequ'il parait par la déclaration que cette Compagnie d'assurance est insolvable et en liquidation, et a cessé totalement de faire des affaires.

Le défendeur allégua en outre comme question de fait que le demandeur esqualité a toujours résidé dans la province d'Ontario, et n'est venu résider temporairement dans la Province de Québec que par un arrangement frauduleux et vexatoire avec la dite compagnie et ses représentants, ayant pour but de permettre ainsi des poursuites contre les personnes qui ont contracté avec la dite compagnie, sans être obligé de fournir un cautionnement pour les frais.

Le défendeur cita :

The Niagara District Mutual Fire Insurance Co. v. *Macfarlane*, 21 L. C. J. 224 ; *The Columbia Insurance Co.* v. *Henderson*, 1 L. C. L. J. 98 ; *The Globe Mutual Insurance Co.* v. *The Sun Mutual Insurance Co.*, 1 L. N. 139.

Le demandeur répondit :

1o.–Que le défendeur ne pouvait alléguer des faits nouveaux dans sa motion parce que le demandeur serait obligé de lier contestation ;

2o.–Que l'article 29 du code civil n'exige qu'une résidence du demandeur dans la province de Québec pour pouvoir poursuivre sans donner un cautionnement : or il appert à la face du bref que le défendeur réside à Montréal, et il n'y a aucun affidavit pour contredire ce fait :

3o.–Enfin, Chapleau en entrant dans cette compagnie d'assurance est devenu un membre d'icelle ; c'est ce qui distingue les compagnies d'assurance mutuelle des assurances à prime. De sorte, qu'il doit participer aux pertes et n'a aucune défense contre la compagnie.

Le défendeur répliqua qu'il avait le droit de faire dans sa motion des allégations de fait, et d'en faire la preuve par une enquête. Mais que dans l'espèce il serait préférable que la Cour adjugea sur le droit avant que le défendeur fit la preuve de ses alégués, ce qui pourrait éviter les frais d'une enquête. Que la question de savoir si Chapleau était membre de la compagnie et avait, oui ou non, une défense était une question à discuter au mérite.

PER CURIAM :—"Considérant qu'il appert par la déclaration en cette cause que la compagnie appelée la "Niagara District Mutual Fire Insurance Company," pour et dans l'intérêt de laquelle le demandeur *esqualité* poursuit la présente demande, n'a pas d'établissement en cette province ;

"Accorde la motion des défendeurs et, en conséquence, ordonne au dit demandeur esqualité de fournir bonne et suffisante caution pour sureté et garantie des frais qui peuvent résulter de la présente action, et ce sous un délai de soixante jours à compter de ce jour, avec dépens.*"

Carter & Carter pour le demandeur esqualité.
Barnard, Beauchamp & Creighton pour le défendeur.

(J. J. B.)

SUPERIOR COURT.

MONTREAL, Nov. 8, 1882.

Before TORRANCE, J.

REEVE v. MONGEAU et al.

Alimentary Pension—Liability of grandchildren. Where there are children, and grandchildren, issue of a deceased child, the grandchildren are liable with the children, for the maintenance of the grandparents, even though the children have means of supplying the aliment by themselves.

This was an action by a mother against her son and grandson, for an alimentary pension. She represented that she had already sued and obtained a judgment against her daughter, the mother of her grandson, but she could not execute her judgment against her daughter by the fraud and conspiracy of her daughter and grandson, and to this end her daughter had transferred all her moveables to her son, the grandson of plaintiff.

The grandson, Adelard Mongeau, pleaded that plaintiff did not show that her own children

*Un jugement semblable, mais plus élaboré, a été rendu par l'honorable juge Papineau, le 30 septembre, 1882, dans une cause No. 1935 C. S. *H. Miles* es qualité v. *J. Jacques*.

were incapable of providing for her wants, and she could not address herself to her grandson Adelard Mongeau, except where her children were all dead or incapable of aiding her wants: that her children, and especially Pierre Lacroix, and André Lacroix, were well able to maintain her, and that in law, they, and not Adelard Mongeau, were liable to support her.

The plaintiff answered in law that this plea was bad, and that Adelard Mongeau, the grandson, was liable for his share as representing his mother, the daughter of plaintiff.

PER CURIAM. The order in which descendants are bound to their ascendants is precisely that in which they are called to their succession; 4 Demolombe, n. 32. Therefore, when there are children, and grandchildren, issue of a deceased child, the grandchildren are liable with the children even though the latter have means of supplying the aliment by themselves. But as a general rule, the grandchildren are not bound except subsidiarily, when their father and mother cannot fulfil this obligation. The contention of the grandson, Adelard Mongeau, here is that he is not liable so long as there are any children living able to fulfil the obligation. Toull. 2, p. 8, n. 613, appears to support his pretension, but other authors (Duranton, 2: n. 394:) and principle seem to be against him. The answer in law is maintained.

Longpré & Co. for plaintiff.

D'Amour for defendant.

Vide Rogron, C. Civ. Nap. on Art 205, p. 168; also Pothier, Personnes, P.1, T. VI, p. 607. Table Générale de DeVilleneuve & Gilbert, vo. Alimens, no. 20.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1882.

Before TORRANCE, J.

MAGUIRE v. HUOT et al, & ALLARD, opposant.

Alimentary Pension—Usufruct of Moveable Property declared by will to be inalienable.

The usufruct of moveable property inherited by the husband, though declared by the testator to be inalienable, non-assignable and not seizable, may be seized in execution of a judgment of séparation de corps, condemning the husband to pay to his wife an alimentary allowance.

The sheriff took in execution the enjoyment and usufruct of certain moveables in the possession of the opposant. He opposed the seizure on the ground that he held them under the last will of his father, who declared them to be inalienable, non-assignable and not seizable, in making the bequest.

The plaintiff contested this opposition on two grounds, the second of which only needs attention. She alleged that the prohibition to seize and sell the usufruct of the opposant was not absolute, and that the judgment on which the execution issued, condemned the opposant to provide for the support of his wife and child; but that this prohibition only confirmed and followed the will of the testator, in selling this usufruct, inasmuch as the sale would have the effect of opening the substitution and of thereby vesting the property in the heir of the opposant according to the will. Further, that the property could be sold for her debt inasmuch as the testator had in view, to furnish aliments to the wife and family of the opposant.

It appeared that on the 20th January, 1876, the plaintiff, Dame H. C. Maguire, obtained a judgment of *séparation de corps* against the opposant her husband, who was condemned to pay her an annual alimentary pension of $240. In virtue of this judgment, an execution issued, and a return of *nulla bona* was made against the opposant. On the 19th April, 1874, the late J. B. Allard, the father of the opposant, made his last will, by which he gave the enjoyment of all his property, to his wife, Dame Elizabeth Eberts, then to go to the opposant after the death of his mother, and after his death to go to his children in proprietorship. The testator died in May, 1874, and his widow died in February, 1881. By the will, Madame Allard and the now defendant T. A. Huot were made testamentary executors. On the 3rd November, 1881, the plaintiff took another action against the surviving executor T. A. Huot, in his quality of executor, to render executory against him the judgment of the 20th January, 1876, and this new action terminated in a judgment on the 30th March, 1882. An execution then issued and seized the usufruct of moveables held by the opposant.

PER CURIAM. The debt due by the opposant

is for aliment to his wife and child, and the Court has no difficulty in holding that for such a cause, the seizure should be maintained. Husband and wife owe aliment to each other.

Carré & Chauveau, tom. 4, p. 1986 :—

Les provisions alimentaires, adjugées par justice, peuvent-elles être saisies pour cause d'alimens, et quelles sont les choses qui sont comprises sous ce mot? p. 665. Ne doit on pas comprendre aussi dans ces causes d'aliments les créances qu'un tiers pourrait avoir sur le saisi pour pension alimentaire? Ainsi, le titulaire de la pension qu'il s'agit de saisir est débiteur lui-même envers quelqu'un de ses ascendants d'une pension alimentaire; celui-ci pourra-t-il saisir à ce titre la pension alimentaire de son débiteur? M. Boitard se prononce pour l'affirmative. Nous adoptons d'autant plus volontiers l'opinion de M. Boitard, qu'à l'occasion des portions de traitement insaisissables, nous admettons (Quest. 1990 ter) que les époux, enfants, ou ascendants, ont une espèce de droit de co-propriété qui leur permet de les saisir-arrêter. Il est évident que, dans le mot saisi, on comprend la famille tout entière, c'est-à-dire la femme, les enfants, les domestiques; d'où il résulte que l'instituteur chez qui un enfant est placé a le droit de faire une saisie pour cause d'aliments sur la pension alimentaire du père. Again, at p. 671. (Quest. 1990 ter.) Est-il des faits à raison desquels il soit permis de saisir-arrêter la portion du traitement des fonctionnaires publics déclarée insaisissable par les lois? He answers, le traitement accordé au fonctionnaire sert, non seulement à ses propres besoins, mais encore à ceux de sa famille, d'où la question de savoir si, faute par ce dernier de satisfaire à ses devoirs de père, d'époux ou de fils, sa femme, ses ascendants ou ses enfants seraient en droit de demander qu'une part de son traitement, même de ce qui en est déclaré insaisissable, leur fût attribué par les tribunaux. L'affirmative sur ce point nous paraît évidente; les membres de la famille n'ont pas seulement, en ce cas, une créance commune, que nous leur avons reconnue, sous la Question 1986, ils ont autant de droit, au traitement, de leur chef, que celui-là même qui le reçoit. The contestation is maintained and the opposition dismissed.—See also Wilson vs. Leblanc, L. C. Jur.

Loranger & Beaudin for opposant.
Doutre & Joseph for plaintiff.

SUPERIOR COURT.

MONTREAL, Oct. 31, 1882.

Before LORANGER, J.

THE ROYAL INSTITUTION FOR THE ADVANCEMENT OF LEARNING *v.* Scott et al., and THE TRAFALGAR INSTITUTE, *mis en cause.*

Will—Action for legacy—Capacity of testatrix to dispose by will.

In an action for the recovery of a legacy, the heirs may be joined with the testamentary executors as defendants.

The testatrix was proved to have been fully competent to manage her affairs up to the time of her death, and to have had a clear understanding of the nature of the property and the uses for which it was bequeathed; the legacy, moreover, was the fulfilment of a long meditated plan.

Held, that the fact that the testatrix lived in a sordid fashion, and was eccentric in many respects, was insufficient to invalidate the will.

The late Barbara Scott made her will 25th November, 1880, before notary, bequeathing to the plaintiff 1st, the sum of $30,000, to be applied to the endowment of a chair of Civil Engineering in the McGill University; 2ndly. An additional sum of $2,000 to establish a scholarship in the same institution. The testatrix died on the 3rd of December following (1880) at the age of 83.

The present action was brought against the heirs and testamentary executors of the testatrix, for the recovery of the legacies above mentioned. The Trafalgar Institute was made a party to the case, as a legatee of one-third of the immovable property of the deceased under the will of Jane Scott, a sister who predeceased the testatrix.

The defendants, besides a demurrer which was dismissed, pleaded, 1st. That the action should have been directed against the testamentary executors alone. This plea was not insisted on at the argument, and the Court was of opinion that it was unfounded.

The third plea was that the original of the will was not written wholly by the instrumenting notaries, and at the dictation of the testatrix. The Court held that it is not necessary in a will in authentic form, that the minute be wholly written by the instrumenting notary—it is sufficient, in the terms of Art. 843, that the

will be read to the testator by one of the notaries, in the presence of the other, and signed by the testator in the presence of both notaries.

The fourth and principal defence to the action was that the testatrix, at the date of the will and for more than a year before, was of unsound mind, and incapable of disposing by will. The chief facts alleged in support of this plea were to the following effect:—That while in possession of a considerable fortune, the testatrix lived for some years before her death in abject poverty, and in a semi-savage condition; and that persons connected with the plaintiff's institution had taken advantage of her mental weakness to induce her to make the will in question. Fifty-two witnesses were examined on the one side and on the other, and it appeared that the testatrix with two sisters Anne and Jane, lived together in a house in Montreal which they inherited from their father. After the death of their two brothers, they had no relations other than the descendants of their deceased brothers. Anne, one of the sisters, in 1855, brought an action to annul the marriage of her deceased brother William, as having been contracted *in extremis*. This produced ill feeling, and disposed the sisters to bequeath their estate to charitable objects rather than to their relations.

Jane Scott died first, leaving her property to her two sisters, with an expression of her wish that it should be devised by them to charitable institutions. Anne Scott died next, leaving the usufruct of her estate to her surviving sister, and the property to the Trafalgar Institute. Barbara continued to live in the same house, and to administer the property. Witnesses stated that the appearance of things in the house was very wretched; that testatrix was usually poorly dressed, and sometimes appeared on the gallery in rear of the house clad only in a chemise. On some occasions she was seen in a semi-nude state by workmen and others in the house. But while there was evidence of unusual eccentricity, the deceased had displayed considerable intelligence in the management of her affairs. The evidence for the defendants established that she was of a miserly disposition, and the promptings of avarice might account for the wretched condition in which she lived. It was also common for persons of her age to be careless of their personal appearance. Under the influence of excitement she might seem at times to be temporarily deprived of reason; but such a state did not last for any time, and her ordinary management of her affairs did not disclose any sign of insanity. There was also the evidence of the notaries and others who stated that she had a perfect understanding of the clauses of the will, and that her faculties were extremely clear. Dr. Proudfoot stated that she was exceedingly healthy until she died, and she boasted that she had never taken a bottle of medicine in her life. She continued to manage her property, and lease her houses, and the notary employed stated that she was perfectly capable of managing her affairs. The bequest to McGill University was the fulfilment of a long cherished intention. The charge of undue influence had entirely failed.

Action dismissed.

Trenholme & Taylor for the plaintiff.

Doutre & Joseph for defendants, Scott.

Archibald for the Trafalgar Institute.

SUPERIOR COURT.

MONTREAL, October 31, 1882.

Before TORRANCE, J.

HARRIS v. ALMOUR.

Prescription—Foreign Judgment.

A judgment obtained in Nova Scotia (anterior to 40 Vict. Cap. 14, Que.) had not the effect of interrupting prescription of a promissory note.

The demand was in three counts: 1st, A judgment of a Court in the Province of Nova Scotia; 2nd, Promissory note; 3rd, Assumpsit.

The plea was one of prescription of five years, the note bearing date 11 February, 1875, payable in 90 days, and the action was instituted on the 3rd April, 1882.

PER CURIAM. I am with the defendant on the prescription. The judgment was a foreign judgment, and did not interrupt prescription. The judgment is not covered by C. S. L. C. cap. 90, and 40 Vic. cap. 14 of Quebec is posterior to the note under consideration.

Action dismissed.

Mcmaster, Hutchinson, & Guerin for plaintiff.

Pagnuelo & St. Jean for defendant.