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LEGISLATION AT QUEBEC.

Art. 128 of the Civil Code reads as follows: "Le mariage doit être célébré publiquement "devant un fonctionnaire compétent reconnu "par la loi." A bill introduced by Mr. Wurtele, Q.C., proposes to repeal this article and to substitute the following: "128. Mar- "riage must be solemnized openly and accord- "ing to the rites and usages of the church to "which the parties or one of them belong, by "a competent officer recognized by law."

There was a difference of opinion among the Codification Commissioners, it will be remembered, as to the wording of this article. Mr. Justice Day differed from his colleagues, remarking: "Art. 128 requires that marriage "shall always be celebrated openly, 'publique- "ment,' and this term *publiquement*, according "to the commentators, means that it shall take "place in church, *en face de l'église*. I object to "a wording of the article which subjects it to "such a construction, as it forms a rule which "is contrary to the constant and recognised "usage of all Protestant denominations except "the Church of England. With the exception "specified, marriages amongst Protestants are "rarely, if ever, celebrated in their places of "worship. I think the article should be "omitted, or so modified as to require only the "presence of witnesses." On the other hand, Messrs. Caron and Morin observe: "La pub- "licité exigée par la première partie de l'article "est dans le but d'empêcher la clandestinité "des mariages, condamnée avec raison par tous "les systèmes de loi; un acte aussi important "et qui intéresse bien d'autres que les parties "elles-mêmes, ne doit pas être tenu secret; or, "le meilleur moyen d'empêcher qu'il ne le soit, "est de rendre obligatoire la publicité de la "célébration. Le mot *publiquement* (openly) a "une certaine élasticité, qui l'a fait préférer à "tout autre; étant susceptible d'une extension "plus ou moins grande, il a été employé afin "qu'il pût se prêter à l'interprétation différente "que les diverses églises et congrégations reli- "gieuses, dans la province, ont besoin de lui "donner d'après leurs coutumes et usages, et "les règles qui leur sont particulières, aux- "quelles l'on ne désire aucunement innover. "Tout ce qu'on a voulu, c'est d'empêcher les "mariages clandestins. Ainsi seront réputés "faits *publiquement* ceux qui l'ont été, d'une "manière ouverte, et dans le lieu où ils se "célèbrent ordinairement, d'après les usages de "l'église à laquelle les parties appartiennent."

An important bill, introduced by Mr. Loranger, has been passed. We have not seen the text of the Act, but we understand that it provides that sales of immoveables situated within the limits of the late parish of Montreal may be made at the office of the Sheriff of Montreal, notwithstanding the erection of new parishes within the *banlieue*, and gives validity to all sales which have been so made. But the Act shall not apply to any proceedings taken to set aside any sheriff's sale now pending, which shall be decided and adjudicated upon as if the present Act had not been passed, and the sales of a certain number of properties within the aforesaid limits which have, until this day, been publicly announced to take place at the church door in certain of the new parishes, may legally be made at such church doors. The law is to take effect in sixty days after its sanction.

This subject was brought under notice in the case of *Fauteux & The Montreal Loan and Mortgage Co.*, reported at 22 L. C. J., p. 282, in which the Court of Appeal held that a sale by the Sheriff of Montreal, at his own office, of land situate in a duly erected parish for all civil purposes out of the parish of Montreal, is null and void, and that such sale could only be legally effected at the Church door of the parish in which the land is situate. The amendment was obviously desirable.

Mr. Audet has introduced a bill to amend Art. 505 of the Civil Code, by which "every proprie- "tor may oblige his neighbor to make in equal "portions or at common expense, between their "respective lands, a fence or other sufficient "kind of separation according to the custom, "the regulations and the situation of the "locality," by adding, "Nevertheless, whenever "a lot of ground is divided up amongst several

" owners or occupants, after the fences dividing " the lots belonging to two neighbors have been " erected, all the owners or occupants of such " lot so divided as aforesaid, are bound and " obliged to maintain the fence erected by the " original owner of the lot so divided." The wording of this clause might be improved.

A bill has been introduced by Mr. Church, Q.C., to amend the law relating to the holding of the terms of the Court of Queen's Bench, the object being to facilitate the progress of business on the appeal side of the Court, by increasing the number of terms, and by authorizing the Court to sit from day to day. The Government promised to take up the question.

A desirable amendment to the Act relating to the bar has been proposed by Hon. Mr. Chauveau, to allow those who have taken degrees in Universities to enter upon the study of the profession without undergoing examination. We have always considered it an unnecessary formality, to subject the graduates of Universities to an examination to test their fitness to enter upon the study of a profession.

Mr. Wurtele has moved for a return, which we trust will be printed, showing :—1. In what Registration Divisions or parts of the Registration Divisions, cadastres are now in force. 2. The dates of the proclamations putting such cadastres in force. 3. The dates on which respectively they come into force; and 4. The dates on which the delay for the renewal of hypothecs expired or will expire.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 30, 1879.

STYCE v. DARLING et al.

Insolvent—Action against his Assignee for Damages.

JOHNSON, J. This action is brought by the plaintiff against Mr. Darling, the official assignee, who took possession in the first instance of his insolvent estate, and afterwards was duly appointed assignee by the creditors, and also against one of the Inspectors (Sumner) to recover damages, laid at $30,000, for malicious and oppressive conduct alleged against them in violating an agreement to let him get back his estate by paying forty cents in the dollar, and the privileged claims.

The defendants plead separately, but both alike. First, they plead a demurrer to the declaration itself, and then, by another plea, they set up the facts of the case in the way that they took place from their point of view. The facts alleged by the plaintiff were shortly, that in July, 1877, an attachment had issued against him addressed to Darling, and afterwards Darling was made assignee to the estate, and the other defendant was made one of the inspectors together with a Mr. Smith and a Mr. Cushing; that Darling took possession of this estate, of which the whole value is said to have been about $20,000, and advertised it for sale by tender; that the plaintiff then, about the 21st September, backed by Mr. Geo. W. Stephens, made a proposal to take it at 40 cents, and the rent and all preferential claims, which was higher than any other offer. It is then alleged that this offer was accepted, and a document was drawn up as follows:—" Insolvent Act, " 1875, and amendments. We, the undersigned " creditors of Mr. Frederick Styce, hereby con- " sent to accept a composition of forty cents on " the dollar on our own respective claims, " payable cash, to be closed within ten days. " This deed of agreement to be ineffectual unless, " and until, the same shall be executed by a " majority in number and value of the creditors " as shall be sufficient to procure the due con- " firmation thereof," and this was signed by the representatives of seven creditors, including the firms of Hodgson, Murphy & Sumner, in which Sumner, the defendant, was a partner, and the firm of Cushing & Co., which included the other inspector of the name of Cushing, and also by two firms for whom the third inspector, Mr. A. W. Smith, signed as attorney. The next allegation is a most astounding one, viz., that the inspectors, before they signed this document, obtained a verbal promise from the plaintiff to pay ten cents in the dollar over and above the forty cents which was to be paid in cash. Then it is averred that Darling was made aware of all this, and consented to it, and

gave the plaintiff a list of creditors whose names had to be obtained; but that notwithstanding his assent, both he and the other defendant interfered to prevent the requisite number of creditors from signing; and Darling himself, on the 25th of September (before the expiration of the 10 days granted to Styce), sold the stock and fixtures to Farley & Oliver, a firm in Toronto.

I must say at once that I have very grave doubts whether such a statement of action as this could be maintained under any circumstances. It is very true that Mr. Styce has now got his discharge, but at the time complained of, he was wholly divested by law of all his estate. He had nothing, and out of nothing nothing can come—not even damage, in the legal sense of loss or injury to property. He must be shown to have had a right that has been violated. What *right* had he, strictly speaking, to get back his estate for his own profit, and to the extent of his own profit—the loss of his creditors? He may have been prevented from receiving a gift, and he was, no doubt, disappointed in his hopes; but that is all; and that does not seem to me to give him a right of action. I do not say that this man, because he was then in the Bankrupt Court, could make no contract whatever; nor that the defendants could be permitted to ill-use him (if they have done so) with impunity. But I say that whatever their acts, they are charged with having caused damage in respect to property and to the rights of property of Styce in his insolvent estate, and that having no property at that time, he could have none of the incidents of property— no claim for the violation of the rights of property such as is made here. But even this gift, which it is said the defendants have prevented him from getting, could only have been his, in case he got the consent of his creditors, which he never got, either within, or after the ten days; on the contrary, it is shown that he never could have got it; and on the 22nd September he said it was all up, and Sumner even went with him to see an obstinate creditor—Mr. Munderloh, I think, who at once positively refused, and there was an end of it, and thereupon Farley & Oliver's offer was accepted. I see no evidence whatever of malice; as to Darling's letter to Nash, it was written after he had despatched his telegram to Toronto accepting Farley & Oliver's offer, and I think was very proper. I do not see either any evidence of Darling's assent to this project of the plaintiff; and, on the whole, I think that if such an action could be maintained at all, it could only be on clear proof of authority given in a formal and official way by the creditors; not in consequence of a mere benevolent permission, given individually; and certainly not complied with by the plaintiff. I think this man was perfectly honest, and naturally desirous of getting for himself what in law belonged to his creditors; but he failed to get it, and has no cause of complaint against this assignee or the other defendant. Their duty was plain, viz., to get as much as they could for the creditors; they seem to have had every desire to help the plaintiff as far as they could with advantage to themselves; and it was only after he himself said it was no use, that they sold the estate. The allegation that the inspectors before signing this permission or agreement, obtained a verbal promise from the plaintiff to pay ten cents, after the settlement for forty cents, is not proved. There is indeed the evidence of Mr. Stephens that Smith told him Styce had offered to pay ten cents more as soon as he could; but that is a very different thing. I must, therefore, dismiss this action; but when I come to the matter of costs, I ask myself whose fault is it that it ever was brought at all? and I cannot but see that the defendants, and the creditors who signed this permission, held out hopes to this poor man, and hopes, perhaps, not altogether disconnected with this possible ten cents extra which Smith acknowledges Styce had offered; therefore, I cannot altogether shut my eyes to the sort of thing that was being done. They brought all this on themselves; and I decline to give them costs against the plaintiff. Action dismissed without costs.

Kerr & Carter for plaintiff.

Monk & Butler for defendant.

DELVECCHIO v. LESAGE, and CLEROUX, mis en cause, and DESMARAIS, opposant.

Lease—Saisie gagerie par droit de suite—C.C. 1623.

JOHNSON, J. In this case there is an opposition by Demarais, claiming as his, and as exempt from seizure, under the *saisie gagerie par droit de suite*, a horse that has been seized as

liable to be sold in satisfaction of rent. The opposition rests on several grounds. This horse, which is of considerable value, belonged to the opposant beyond doubt. The only thing to be considered is whether it was seizable for rent. In the first place, he was a horsedealer, and was neither tenant nor sub-tenant, and therefore, under Art. 1623, the horse was exempt. Then Langlois sub-leased with the plaintiff's knowledge, and the plaintiff knew the horse was Demarais' horse, and Langlois, the hotel-keeper, owed no rent. Then, though the bailiff's return said the seizure was made on the 4th September, that return was contested, and it was shown that the seizure only took place on the 6th, after the 8 days allowed by law, and this is now *de rigeur*. Opposition maintained with costs.

Beique & Co., for opposant.

A. Desjardins, for plaintiff contesting.

BANK OF TORONTO v. PERKINS es qual. et al.

Wife séparée de biens—Mortgage from Husband.

MACKAY, J. The plaintiffs sue Perkins as assignee to the bankrupt estate of one Samuel S. Campbell, Lucy Jane Stevens, Campbell's wife, *séparée de biens* from him, and Brackley Shaw, and Samuel S. Campbell to authorize his wife to defend herself but not otherwise. In August, 1876, Perkins was appointed assignee to the bankruptcy of S. S. Campbell. The Bank, declaring to be mortgage creditor of S. S. Campbell, under an obligation of 19th January, 1876, by Campbell to one Bonnell, transferred to the Bank by Bonnell on the same day, brings this action to have revoked as fraudulent, null and void, an obligation and mortgage by Campbell to his wife, dated 14th June, 1875, for $25,000, and another obligation and mortgage by Campbell to Brackley Shaw of 1st June, 1876, for $45,000, at the passing of which Mrs. Campbell renounced her priority of *hypothèque* in favor of Shaw. This renunciation of priority of *hypothèque* by the wife it is also sought to have declared fraudulent, null and void, as being a prohibited suretyship by the wife for her husband. The Bank of Toronto is a proved creditor against Campbell's bankrupt estate, and may be admitted to be creditor of Bonnell. The Bank relies upon the Court holding that sales between husband and wife are so prohibited by law that the mortgage gotten in June, 1875, from her husband by Mrs. Campbell must be declared a nullity; it goes farther and charges simulation, that no real consideration was had by Campbell for that mortgage; that the wife never owned interest or property to the value alleged in the mortgage deed. Upon this last point I am against the Bank, for it has been well proved that Mrs. Campbell in the course of a partnership between Charles Hagar and herself, *séparée de biens*, at the time, earned or made considerable property and money which the husband Campbell took possession of. Hagar proves it to a demonstration. On the 9th of November, 1875, Campbell declared before notary that certain errors had occurred in the description of the lots of land mortgaged to Mrs. Campbell on the 14th of June, 1875, and he corrected the errors. Here, says plaintiff's declaration, was really a new *hypothèque* never accepted by the wife, and null and void. I do not think so. It is to be noticed that all the acts and obligations referred to were duly registered. The Bank, when it took from Bonnell, could have seen all the obligations and deeds registered in the Registry Office. Mrs. Campbell before entering into the deed with Campbell taking the mortgage from him of the 14th of June, 1875, obtained the authorization of a Judge to enter into that transaction. Perkins has not seen fit to plead to the action. Mrs. Campbell pleads; so does Shaw. They, of course, deny plaintiffs' material allegations.

Upon consideration I have to pronounce against plaintiffs. The case as regards Shaw particularly is favourable to him. I do not see Mrs. C's. cession of priority of *hypothèque*, to favor Shaw, to be a nullity, or a suretyship prohibited. See 3 Quebec L. Rep. The case viewed as merely between Mrs. Campbell and the Bank is favourable to her. The Code prohibits sale between husband and wife. Yet is the rule such an iron one that a husband can keep all the money and goods of his wife, *séparée de biens* from him, and enrich himself to her ruin? Can the wife in such a case make no treaty with the husband, take no securities from him towards rectification of things? Though authorized by Judge to take a mortgage from the husband, towards securing herself, in such a case, is the

mortgage null and void, and can a third person (only becoming creditor of the husband long afterwards) set up such exception of nullity? Certainly, says the Bank. No! I say. In the old law we see husband's sales to wife *séparée*, and wife's sales to husband, treated of occasionally. For instance, in No. 39 Pothier, Vente, is stated a case of a husband selling a land to his wife *séparée*, and *à vil prix*. The heirs of the husband may complain, and get back the land; the sale will be easily declared simulated and fraudulent, and the wife be held to be entitled only to the sum she really paid. So says *Pothier*. That Campbell in the case now before us was debtor to his wife, 14th June, 1875, is well proven; the simulation charged has been disproved. I see no fraud proved against Mrs. Campbell. I think the plaintiff's action unfounded. I do not see a sale prohibited by Mrs. Campbell to her husband.

Query: Campbell being in bankruptcy, Perkins, his assignee, is a *créancier isolé*, like the Bank of Toronto, entitled to bring such an action as the present, in its own interest, without having first put the assignee *en demeure* to sue? Here the bank, for its own benefit, is suing, and sues the assignee, vested by law with all the lands and goods of the bankrupt, Campbell. Campbell, as I have said before, is *not* sued directly or personally. Action dismissed as to defendant Perkins without costs, and as to Shaw, and as to Stevens and Campbell with costs.

Laflamme & Co., for plaintiffs.

L. N. Benjamin, for Shaw.

Gilman & Holton, for Stevens and Campbell.

COURT OF REVIEW.

MONTREAL, July 9, 1879.

JOHNSON, MACKAY, RAINVILLE, JJ.

[From S. C. Montreal.

BEAUSOLEIL es qual. v. LA BANQUE JACQUES CARTIER.

Insolvent Act, 1875—*Action by Creditor under Sect.* 68.

RAINVILLE, J., dissenting, said the action was by a creditor of one Champagne, an insolvent, in the name of his assignee, Beausoleil, who had refused to bring the action, to recover about $300 from the defendants, on the ground that it was money paid in violation of sec. 134 of the Insolvent Act. The action was dismissed in the Court below (Jetté, J.) and his Honor considered the judgment to be correct. The question was whether a creditor for a small amount, say $5, could sue and obtain the whole amount the defendant might be condemned to pay. His Honor thought not; the creditor should show that he was creditor for some specific amount, and he ought not to get more than that. The creditor here did not show that he was creditor for any particular amount.

JOHNSON, J. The dissent of the learned Judge who has just spoken, requires that I should enter more fully than I had intended into the question now before us. The majority of the Court is for revising this judgment upon the single point of the necessity for proof of the precise extent of pecuniary interest held by Stirling & McCall in the event of this suit. The Court is not called upon to discuss the validity of the grounds of dissent. They must be left to have the just and proper weight that belongs to them. We are only required to expose the grounds of our own judgment. The question is presented, I believe, for the first time, and depends not on any general principles that we are accustomed to apply to ordinary cases; but upon a statute giving a special remedy in a particular case, under an exceptional procedure which it enjoins.

The action was brought nominally by the assignee of the insolvent estate of Remi Champagne, to recover some $320 and interest from the defendant, on the ground of its having been a payment in violation of the 134th section of the Act. The defendants issued a writ of attachment against the insolvent Champagne, who thereupon paid them, before the return of the writ. A few days afterwards, Stirling, McCall & Co. issued another writ, under which the proceedings in insolvency have been had. Stirling, McCall & Co, under the 68th section of the Act, are now virtually suing in the name of the assignee, to get back from the defendants the money that was paid to them while they knew the man Champagne to be insolvent. The defendants merely plead what they call a *peremptory exception*, and at the tail of it they say that they deny the truth of all the plaintiff's allegations. The substance of what they set out in their plea of peremptory exception, so-called, was that they considered Champagne insolvent, and proceeded against him accordingly, but that

they took the payment in good faith, and even reduced their demand somewhat. That Stirling & McCall afterwards put this man's estate into bankruptcy, and knew, as well as the defendants and all the other creditors, that this payment had been made, and yet never complained of it. Then comes, at the end of this plea, a sort of protest, that Stirling & McCall have no right to proceed as they are doing in this case, in the name of the assignee, and that the defendant denies everything that is alleged, with the exception of what has been admitted. It appears quite clear that the defendant has thus admitted that Stirling & McCall were creditors, and took the initiatory proceedings against this insolvent estate. There is no preliminary plea asking that the Judge's order be set aside as irregular. There is nothing but this general protestation that the defendants acted in good faith, and that Stirling & McCall have no right to proceed in this way.

Here, then, is an order of a Judge made under the authority of a statute, and with *connaissance de cause*, that this assignee may sue, and if he can, may recover all the money illegally kept by the defendants, and which they got from the bankrupt at a time when the payment was prohibited; and yet it is contended, while this order still subsists and is unquestioned, that he is not to get judgment, because the money is to go to the creditor who is invested by law with the right to cause the action to be brought in this way. The judgment now before us appears to admit every part of the plaintiff's case, except the precise extent of Stirling & McCall's interest, which the learned Judge held to be a *sine qua non;* and the action was dismissed on the single ground that the demand of the assignee could only be maintainable to the extent of the debt, whatever it may be, that was due to them by the bankrupt's estate. In other words, this particular recourse, given by the statute under the peculiar system of the bankrupt laws, was regarded as identical with the *actio revocatoria* of an ordinary creditor whose interest is to be measured by the extent of his debt. The majority of the Court takes a different view of the operation of the 68th section. It reads as follows:—Sec. 68. "If at any time any creditor of the insolvent desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee, under the authority of the creditors or of the inspectors, refuses or neglects to take such proceeding after being duly required so to do, such creditor shall have the right to obtain an order of the Judge authorizing him to take such proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe; and thereupon any benefit derived from such proceeding shall belong exclusively to the creditor instituting the same for his benefit, and that of any other creditor who may have joined him in causing the institution of such proceeding. But if, before such order is granted, the assignee shall signify to the Judge his readiness to institute such proceeding for the benefit of the creditors, the order shall be made prescribing the time within which he shall do so, and in that case the advantage derived from such proceeding shall appertain to the estate." In our opinion, the interest of the creditor here is one that is vested in him by the statute, and his right is to be exercised in the manner prescribed by it.

The immorality of the plaintiff's position was insisted on; and it was said he was getting what was not his. Well, with respect to the immorality of the thing, I must say I am not aware that bankruptcy considered either by itself as a commercial disease, or with reference to the treatment prescribed for it by the law, has ever possessed any very seductive allurements for the moralist; but I quite agree that the immorality that may in any case affect or vitiate a contract, is a thing to be looked at. The plaintiff's position in the present case does not appear to me tainted with a legal immorality that could affect his rights. What is there immoral in the Legislature saying to the creditors of a bankrupt: "You may renounce, if you see fit to do so, your collective right to defeat the prohibited transactions of the bankrupt; and you may give that right to any one of your number who chooses to take the risk of bringing an action?" Now, that is precisely what the law has done in the 68th section; and a creditor who chooses to accept that position and that risk is exactly in the position that all the creditors would have occupied, if they had chosen to bring the action for themselves, in the name of the assignee, except that he individu-

ally, instead of the estate, risks the costs. Therefore the defendant has no other defence to him, than he would have had to them all; and it is immaterial to this action what might have been the extent of the beneficial interest moving the creditor who undertakes this proceeding. He asserts the rights that belonged to the creditors generally, and which they have renounced in his favor, and it appears a necessary consequence that a defendant in such a case could have no other defence to the assignee's demand, when it is made for one of the creditors, after the rest have renounced, than he would have had if the assignee still represented them all. That the plaintiff is getting an advantage that the other creditors might have got for themselves, if they had chosen, may be admitted; but they have not chosen; therefore, if advantage it be, it is at least an advantage with the full assent of all those who, under any circumstances, could complain of it. The administration of this bankrupt law is replete with such instances: To go no farther than the case of a purchaser of a bankrupt's debts, he gives perhaps a few dollars for some thousands; but the creditors have assented to it as being for their advantage,—as they have done here; yet it has never been urged in any of the numerous cases of that class, that there is anything immoral in the purchaser getting the full amount, if he can recover it, of the debts due to the bankrupt concern. It is, so to speak, a speculation sanctioned by the law which vests the proceeds in the speculator. I fully assent to the general principle that interest is the measure of actions; all that I say is, that the plaintiff here, as a creditor, as he undoubtedly is, as, indeed, the plea expressly admits him to be, is invested by the statute with the full interest of all the other creditors; and the test of interest applies not only to actions but to exceptions.

With respect to the second part of the case, it is in a nutshell. The Bank had knowledge of the insolvency of its debtor; it took steps founded on that insolvency which itself is alleged in the affidavit made for the writ. It received payment at a time that made the insolvency not only probable, but absolutely certain, as far as their knowledge went; and under the circumstances the money belongs not to the Bank, but to the creditors who have chosen to deal with the case in this way. The case of Sauvageau v. Larivière decided that the creditor making oath that his debtor was going to leave without paying him, does not necessarily imply knowledge at the time that the debtor was insolvent. That was certainly going quite as far as it would be safe to go. In the present case the creditor knew beyond doubt that his debtor was insolvent. The affidavit alleges it, and it is admitted in the plea. It was asked, what was the Bank to do? The debtor was in prison, and came and asked to be liberated. How could it refuse to take the money? The point is not now whether the Bank at that moment could take it, but whether they can now keep it. We are, therefore, of opinion to revise this judgment, and adopting the view taken by the learned Judge on every other point of the case, we correct the only ground on which he held that the action could not be maintained, and we give judgment for plaintiff with costs in both Courts.

Bethune & Bethune for plaintiff.
Lacoste & Globensky for defendants.

JOHNSON, TORRANCE, RAINVILLE, JJ.

[From S. C. Montreal.

GERARD v. LEMIRE dit MARSOLAIS; and GERARD, plaintiff en désaveu v. ST. PIERRE et al., defendants en désaveu.

Attorney—Action for séparation de corps et de biens—Reconciliation—Costs.

TORRANCE, J. The plaintiff had taken out an action *in forma pauperis*, for a separation from bed and board against her husband. On the 15th November, the defendant was foreclosed from pleading, and immediately an inscription for *enquête ex parte* was filed for the 18th November. On the 16th November the defendant gave notice to the attorneys of the plaintiff of a motion to reject the inscription on the ground that the parties were reconciled, and this motion was supported by the affidavit of plaintiff and defendant. The motion was rejected, and a new inscription was made by the plaintiff's attorneys for the 4th January. Thereupon the plaintiff began an action *en désaveu* against her attorneys. This action was maintained by judgment of the Court (Mackay, J.) on the 20th February last. This judgment is now under review. The defendants *en*

désaveu contend that the action of disavowal is unfounded: 1st. Because they had a right to continue the action for their costs against the defendant. 2nd. Because the only proceeding which the plaintiff could take against her attorneys was to revoke their mandate conformably to C. C. P. 205, namely, by paying their costs. On the other hand, the plaintiff has invoked C. C. 196, by which a reconciliation between husband and wife has the effect of extinguishing the action. The Court took this view, and, regarding the reconciliation with the utmost favor, it is impossible for us to take a different view from the Court whose judgment is under review.

Duhamel & Co., for plaintiff *en désaveu.*

St. Pierre & Co., defendants *en désaveu.*

MACKAY, TORRANCE, PAPINEAU, JJ.

[From S. C. Bedford.

PRIME v. PERKINS et al.

Second distress under one execution.

MACKAY, J. Prime brought an action to have a second distress set aside. It was in the nature of a revendicatory process. His Honor observed that no value had been assigned to the effects, and in a revendicatory action, it was absolutely necessary to give a value to show jurisdiction. The Superior Court had only jurisdiction in cases which were not exclusively of Circuit Court jurisdiction. As to the other point, his Honor entirely adopted the argument on behalf of plaintiff, that a second distress was null.

PAPINEAU, J. The plaintiff had been condemned by the District Magistrate to pay the defendant, Perkins, collector of Inland Revenue, $75 fine and $28.85 costs, for having sold spirituous liquors without license. A warrant having been issued, the bailiff who was charged with the execution, seized a horse, harness and waggon, which, being sold, produced only $12.06, leaving only $5.41, after deduction of the costs, $6.65; so that $99.44 remained to be levied. Without making any return of his proceedings on the first seizure, he made a second. The plaintiff, a physician, took an action of revendication, alleging that the effects seized were his property, and that the defendants, (the collector and the guardian) illegally detained them. Defendants pleaded in substance that the first seizure not having realized the required amount, a second seizure had been made. The sale under this seizure had been prevented by the *saisie-revendication*, which was dismissed by the Court below (Dunkin, J.) The question was as to the validity of the second distress. In England, the principle had always been maintained that the guilty person cannot be made to suffer twice for the same offence. This doctrine was not unknown to the French law, and it was well settled in Canada. The defendants referred to the case, provided for by our law, for making a seizure in another district, when the first seizure does not yield sufficient, and on the same principle it was urged, a second distress in the same district, should be sanctioned. This was using the same warrant for two distresses, but there was only one execution, and it was not making a party suffer twice for the same offence. His Honor cited 1st Burrow's reports, p. 579, *Hutchins* v. *Chambers et al.*, in which Lord Mansfield expressed himself as follows:—"As to the second distress, the first question relating to that is whether this warrant can be at all justified, as it was a second distress taken under the same warrant, when enough might have been taken at first, if the distrainer had then thought proper? Now, a man who has an entire duty, shall not split the entire sum, and distrain for part of it at one time, and for other part of it at another time; and so *toties quoties*, for several times; for that is great oppression. But if a man seizes for the whole sum that is due to him, and only mistakes the value of the goods seized, (which may be of very uncertain or imaginary value, as pictures, jewels, race horses, &c.,) there is no reason why he should not afterwards complete his execution by making a further seizure." The majority of the Court came to the conclusion that Judge Dunkin had properly maintained the second distress. However, this judgment was not to be taken as a justification of the conduct of the officer charged with the execution. It was his duty to have seized sufficient at once, to dispense with the necessity for any further seizure.

TORRANCE, J., concurred.

Judgment confirmed.

S. W. Foster for plaintiff.

Racicot & Co., for defendants.