The Legal News.

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RESPONSIBILITY OF REGISTRARS.

The decision of the Court of Queen's Bench in the case of *Trust & Loan Co. & Dupras* is of the utmost moment to registrars. A registrar, in making the certificate for the sheriff, as required by Article 700 of the Code of Procedure, omitted the hypothec constituted by the deed of sale to Charbonneau, the judgment debtor, who had been more than ten years in possession. Charbonneau bought from one Lebrun, and assumed the hypothec existing on the property, created by Lebrun in favor of the Trust & Loan Company. Charbonneau could not prescribe this hypothec by ten years' possession. The person who prepared the certificate seems to have been under the impression that he need not look back more than ten years, whereas the Code requires that he should mention in his certificate "*all* hypothecs registered against the parties who, during the ten years previous to the sale, were owners of the immoveable." There was no question about this, but the Court of first instance dismissed the action against the registrar on the ground that the insolvency of the debtor and of his *auteur* (who had never been discharged from personal liability) had not been satisfactorily established, and that the creditor might have his recourse against them. The Court of Appeal has taken a different view of the registrar's liability. It holds him absolutely responsible for the amount of a hypothec omitted in his certificate, and does not impose on the creditor the duty of showing the debtor's insolvency—"Considérant que la dite appelante n'était pas tenu de discuter les autres biens de son débiteur ou autres obligés à sa créance, les dommages qu'elle réclame étant constatés par le fait qu'elle aurait touché le montant de sa créance, et qu'elle n'a pu le faire par la faute et la négligence de l'intimé." This is the unanimous judgment of the Court, and it leaves no doubt as to the serious responsibility which the law imposes on registrars.

SETTLEMENT IN FRAUD OF ATTORNEY.

We are indebted to a correspondent for a note of an old unreported decision by the late Mr. Justice McCord, in *Laplante* v. *Laplante*, in which the ruling of the Superior Court is substantially the same as that of the Court of Queen's Bench in *Montrait & Williams*, 3 Legal News, 10; 24 L.C.J. 144. The action was by a father against a son, for an alimentary allowance, and the son, without the consent of the plaintiff's attorney, effected a settlement with the plaintiff in person, similar to that made in the case of *Montrait & Williams*, stipulating that each party should pay his own costs. The Superior Court gave effect to this arrangement, on condition that the costs of the action should be paid to the plaintiff's attorney.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 3, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER, CROSS, JJ.

LA SOCIÉTÉ DE CONSTRUCTION MONTARVILLE (contestant below), Appellant, & COUSINEAU et vir (claimants below), Respondents.

Married Woman—Renunciation of hypothecary rights.

A husband may execute a valid hypothec in favor of his wife on his immoveable property, in lieu of a hypothec which she had by her contract of marriage, to secure a sum of money brought by her at the marriage and reserved as propre by her contract of marriage.

A married woman may validly renounce her priority of hypothec in favor of a third person lending money to her husband on the security of his real estate.

Such renunciation in favour of a third party does not deprive the wife of her rights against other mortgage creditors inferior in rank to herself.

This was an appeal from the judgment of the Superior Court, Montreal, Jetté, J., Sept. 13, 1879, *In re Hogue*, insolvent. See 2 Legal News, p. 308; 23 L.C.J., p. 276, for the judgment below.

The judgment was unanimously confirmed in appeal.

Lacoste & Globensky, for Appellant.

Bonin & Archambault, for Respondent.

SUPERIOR COURT.

MONTREAL, June 30, 1880.

HOMIER v. RENAUD, & MORIN, oppt.

Married Woman—Renunciation by Wife séparée de biens of hypothec on husband's immoveables.

A wife separated as to property may validly renounce in favor of a creditor of her husband any hypothecary claim whatever on her husband's immoveables.

The opposant, *séparée de biens* from the defendant, her husband, filed an opposition *à fin de charge* for a *rente* of $200 per annum settled upon her by marriage contract, with hypothec on an immoveable belonging to her husband seized in the cause.

The plaintiff contested the opposition on the ground that the wife had ceded to him priority of hypothec by the obligation which was the basis of the suit. The opposant answered that this was equivalent to a suretyship in favor of her husband, and consequently contrary to law, and null and void.

JETTE, J., said that in the case of *Hogue & Cousineau & La Société de Construction Montarville*,* he had held that the wife, notwithstanding the terms of C. C. 1444, may renounce, in favor of her husband's creditor, not only to her dower, but to any hypothecary claims whatever which she may have on her husband's immoveables. The fact that in the present instance the wife was *séparée de biens* did not affect the case, because the wife, in so renouncing, was not binding herself. A wife may pay the debt of her husband, but she cannot borrow money to do so;—*Buckley & Brunelle*, 21 L. C. Jurist, p. 133.

The judgment is as follows:—

"La Cour, etc.,

"Considérant que l'opposante demande par son opposition à fin de charge que l'immeuble saisi sur le défendeur, son mari, ne soit vendu qu'à la charge d'une rente de $200, et d'un droit d'habitation, à elle assurées par son contrat de mariage en date du 16 Octobre, 1864, avec hypothèque sur le dit immeuble;

"Considérant néanmoins que par l'acte d'obligation sur lequel repose la créance du demandeur, la dite opposante a cédé pour le paiement de la dite créance priorité sur l'hypothèque lui garantissant les droits sus énoncés;

"Considérant que cette renonciation est parfaitement valable et légale, et ne constitue pas une obligation de la femme en faveur de son mari;

"Maintient la contestation faite par le demandeur de la dite opposition, et renvoie la dite opposition avec dépens distraits," &c.

Opposition dismissed.

F. L. Sarrasin for opposant.

Archambault & David for plaintiff contesting.

* 2 Legal News, 308: 3 Legal News, 329; 23 L.C.J., 276.

SUPERIOR COURT.

DISTRICT OF BEDFORD, Feb. 15, 1864.

J. S. MCCORD, J.

LAPLANTE v. LAPLANTE.

Attorney—Settlement—Costs.

When plaintiff's attorney has by the conclusions of his declaration demanded distraction of costs, and plaintiff's demand is substantially proved, a settlement between the parties, without the attorney's consent, by which a sum of money is paid by defendant to plaintiff, and the latter abandons his action, does not deprive plaintiff's attorney of his right to obtain judgment for costs against the defendant.

Action by a father, about 80 years old and utterly destitute, for an alimentary pension, against his son, a well-to-do farmer of Sutton. Defendant pleaded to the action and fought it vigorously. After it had been pending for over a year, plaintiff's *enquête* having been closed and defendant's *enquête* proceeding, defendant's attorney filed a written settlement of the case, signed by plaintiff and defendant (in the absence and without the knowledge of plaintiff's attorney), whereby, for the consideration of $300 received by plaintiff from defendant, the action was abandoned and declared settled, *each party paying his own costs.*

Plaintiff's attorney insisted that the defendant should be condemned to pay costs of suit in full to him because:—1st. The declaration concluded as usual for distraction of costs in his favour; 2nd. The plaintiff would never have found an advocate to take his case, although a good one, if there had been no expectation of eventually getting costs from defendant; 3rd. The plaintiff's pretensions were abundantly proved by the evidence of record; 4th. This settlement at the eleventh hour, when defendant saw that he was going to be beaten, was

evidently a trick of defendant to cheat plaintiff's attorney and get better terms for himself.

The deed of settlement was merely filed by defendant; there was no evidence by defendant or anybody else to explain the circumstances under which it was effected, as plaintiff's attorney thought that the defendant's motives to obtain the settlement were sufficiently apparent from the nature and circumstances of the case itself and the financial position of the parties.

The COURT, by its judgment, declared the case settled, but with costs of suit against the defendant, *distraction* to plaintiff's attorney.

Racicot for plaintiff.

O'Halloran for defendant.

(E. R.)

SUPERIOR COURT.

MONTREAL, October 6, 1880.

FORTIN v. SAY.

Evidence—Interrogatories upon articulated facts—Holding interrogatories unanswered as admitted.

An action of damages may be supported, without other proof, by the failure of the defendant, an absentee, to answer interrogatories duly served, and which, under C.C.P. 225, are held to be admitted.

The plaintiff claimed the sum of $5,000 from the defendant as damages for verbal slander. The case had grown out of a sale of a dog by the plaintiff to Say. The defendant complained that he had been cheated in this transaction, the dog not turning out to be as valuable as the plaintiff had represented, and being subject to fits. Expressions used by Mr. Say after this, in conversation in a hotel, were the ground for the present action

MACKAY, J. During the pendency of the case the defendant left the Province, and the plaintiff has endeavored to prove his case by serving interrogatories *sur faits et articles* on defendant, and having them taken *pro confessis*. The service was made upon the attorneys of the defendant, and they said they did not know where the defendant was, and they have made no motion before me to retard the cause. There is no proof but that resulting from the *faits et articles* to the absentee, which, of course, are unanswered. I do not think it is a good rule to allow a case to be proved by having interrogatories which are unanswered taken *pro confessis*, without other proof. It was well known that the defendant was an absentee, and the interrogatory was put, "Is it not true that the plaintiff was damaged to the amount of $5,000?" The Code, however, sanctions such a proceeding, and says that the facts may be held to be admitted, and the Court must give judgment in favor of the plaintiff. But the amount of damages awarded will be restricted to $11.

The judgment is as follows:—

"Considering that there is no proof in this cause but that resulting from the *faits et articles* administered to defendant, who is absent, by service of the rule and interrogatories on his attorneys of record;

"Considering that under our Code of Procedure such service of *faits et articles* and interrogatories, with defendant's default and his attorneys' failure to indicate defendant's place of abode, may authorize the Court to hold the interrogatories as confessed, *avérés*;

"Taking them for confessed, but only because the law orders, the Court finds that plaintiff's case is sufficiently made out to entitle plaintiff to some money damages from defendant for the causes mentioned in plaintiff's declaration; judgment therefore for plaintiff for $11, with costs as in an action for $100 in this Superior Court;—the Court considering the plaintiff's case, supported only as it is, not to be entitled to so much favor as if it had been made out otherwise; as usually such cases are."

Loranger, Loranger, Pelletier & Beaudin for plaintiff.

Keller & McCorkill for defendant.

Ex parte PELLETIER, petr. for certiorari, HURTEAU et al., Justices, & ROCHELEAU, prosecutor.

Master and servant — Desertion from service—Conviction.

The conviction of a servant for deserting from service should find desertion after a hiring by written contract or verbally before a witness.

This was a certiorari, to test the validity of the conviction of Elmire Pelletier for deserting the service of Mr. Rocheleau, her employer. It appears that the girl was a minor, only 15 years of age, and her father, being unwilling that she should be in the service of Rocheleau,

came and took her away. The girl was charged with desertion before the magistrates at Longueuil, and was fined $5 and costs.

MACKAY, J. Rocheleau's information stated formally enough a case against Elmire, but the conviction has not pursued its language.

The petition alleges the illegality of the conviction and seeks to have it quashed. The Court finds a fatal defect in the conviction; it merely sets out that the girl left the service of Rocheleau, having been previously engaged by him,—"bien que la dite Elmire Pelletier se fût antérieurement engagée au service du dit Joseph Rocheleau pour une année,"—without saying how. It is essential to a prosecution under the statute (33 Vic. [Que.] cap. 20), that there should be desertion after a hiring in writing, or a verbal hiring before a witness, and this should be found by the conviction. Further, the girl was a minor, and the father never consented to the hiring. Certiorari maintained and conviction quashed.

F. J. Bisaillon for petitioner.

R. Prefontaine for Justices of the Peace.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, Oct. 12, 1880.

CRAMP v. COQUEREAU et al.

Judicial surety—Alimentary allowance.

A judicial surety is not entitled to an alimentary allowance under C. C. P. 790.

The defendant was in jail under a judgment ordering *contrainte par corps*. The debt arose out of a judicial suretyship, to wit, a bond for costs in Appeal.

J. C. Lacoste, for defendant, applied for an alimentary allowance under C. C. P. 790.

G. B. Cramp, è contra, cited C. S. L. Can., cap. 87, s. 6 and s. 24; *Vermette* v. *Fontaine*, 6 Q. L. R. 159.

TORRANCE, J., refused the application on the ground that the judicial surety was not entitled to the alimentary allowance. It was given to a debtor arrested by a capias.

Petition rejected.

G. B. Cramp for plaintiff.

J. C. Lacoste for defendant.

COURT OF REVIEW.

MONTREAL, June 30, 1880.

JOHNSON, JETTÉ, LAFRAMBOISE, JJ.

GAGNON v. SYLVA dit PORTUGAIS.

[From S. C., Montreal.

Minor—Defence on ground of minority.

A minor, in order to be relieved from liability upon his contract, must allege and prove that he has been injured thereby.

A minor emancipated by marriage does not require the assistance of a curator to defend a personal action.

A capias issued against the defendant, a minor, for the price of a horse sold to him by the plaintiff, and which he was charged with secreting. He petitioned to quash on the ground that he was a minor. The Court below (Mackay, J., Dec. 30, 1879) rejected the petition.

In Review,

JETTÉ, J., had no hesitation in confirming the judgment: "*Minor restituitur non tanquam minor, sed tanquam loesus.*" The defendant here did not pretend that he was injured by the contract. But another question arises—Can a minor, emancipated by marriage, as the defendant has been since the date of the contract, *ester en justice*, without the assistance of a curator? C. C. 320, prohibits him from bringing or defending a *real* action without the assistance of his curator. It may be hence inferred that he can defend a *personal* action without such assistance.

Judgment confirmed.

P. Lanctot for plaintiff.

Augé & Laviolette for defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, September 17, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ.

THE TRUST & LOAN CO. OF CANADA (plffs. below), Appellants, & DUPRAS (deft. below), Respondent.

Registrar, Responsibility of, for errors in certificate —C. C. 1053.

A registrar is responsible to the creditor for the damage caused by the omission of a hypothec in his certificate furnished to the Sheriff, and the creditor may proceed against the registrar

to recover the amount with interest, without showing that the debtor and others liable are insolvent.

The action was brought by the appellants to recover from Dupras, Registrar of the County of Two Mountains, the sum of $1,000 under the following circumstances: The appellants, in 1863, had loaned $1,000 to one Lebrun dit Laforêt, and obtained a hypothec on a property belonging to him. In 1864, Laforêt sold this property to Charbonneau, the purchaser assuming the obligation to the Trust & Loan Co. as part of the price. In 1876, the property was sold at Sheriff's sale, the price was deposited in Court, and distributed according to the Registrar's certificate, which omitted all mention of the $1,000 due to the Trust & Loan Co. The latter subsequently gave the Registrar the month's notice required by law, and instituted an action against him for the recovery of the amount of the hypothec.

The judgment of the Superior Court (Belanger, J., Ste. Scholastique, March 24, 1879), admitted the right of action and the insufficiency of the certificate; but dismissed the action on the ground that the appellants had not proved that they had lost all recourse for their debt against Charbonneau and Laforêt. The following were the *considérants* on this point:

"Considérant que la dite demanderesse, par le dit rapport de collocation, n'a pas été payé de sa dite créance de $1,000 avec les intérêts, et ce par la faute du dit défendeur;

"Considérant néanmoins que la demanderesse n'a pas fait preuve que par le fait qu'elle n'a pu être colloquée et payée de sa dite créance sur les deniers provenant de la dite vente, par le dit Shérif, faute par le dit défendeur d'avoir mentionné la dite hypothèque de la demanderesse, contre le dit Joseph Charbonneau, ainsi qu'il y était tenu par la loi, elle a perdu tout recours pour se faire payer sa dite créance, tant par le dit Joseph Charbonneau que par le dit Henri Paul Lebrun dit Laforet, son débiteur originaire, qu'elle n'a jamais déchargé, et contre lequel par conséquent elle a toujours eu, et a encore, son recours efficace;

"Attendu qu'elle n'a pas établi que les dits Joseph Charbonneau et Henri Paul Lebrun dit Laforet, étaient après la dite vente de terre par le Shérif, et la distribution des deniers provenant de la dite vente, insolvables et hors d'état d'acquitter la dite créance;

"Considérant qu'il n'y a lieu à l'action en dommages en faveur de la demanderesse, contre le défendeur, pour les raisons mentionnées en sa dite action, qu'en autant qu'elle établirait qu'à raison de la dite vente par le Shérif, et de la dite distribution des dits deniers, la dite demanderesse se trouve privée de tout recours et moyens effectifs contre les dits Joseph Charbonneau et Henri Paul Lebrun dit Laforet, pour être payée de sa dite créance," &c.

Sir A. A. DORION, C.J., said the judgment was erroneous in holding that the appellants could not proceed directly against the registrar.

The judgment was reformed as follows:—

"Considérant que le 4 Août, 1863, un nommé Henri Paul Lebrun dit Laforet a consenti une obligation pour $1,000 à la demanderesse, appelante, pour prêt d'autant, avec obligation de la rembourser le 1er Mai, 1868, avec intérêt de 8 pour cent par an, semi-annuellement et d'avance, le 1er Mai, et le 1er Novembre de chaque année, pour sureté duquel remboursement, il hypothéqua une terre située à St. Augustin, dans le Comté des Deux-Montagnes; laquelle obligation fut enregistrée le 7 Août, 1863, au Bureau d'Enregistrement du Comté des Deux-Montagnes;

"Considérant que le 2 Décembre, 1864, Lebrun dit Laforet a vendu cette terre à un nommé Joseph Charbonneau, pour $3,286.66, en déduction de laquelle somme, ce dernier s'est obligé à payer à la demanderesse, appelante, la dite somme de $1,000 avec intérêt à 8 pour cent, en conformité à un certain acte d'obligation reçu devant Mtre. Doucet et confrère, notaires, le jour et an y mentionnés, et pour sureté du paiement du dit prix de vente, la dite terre devait demeurer hypothéquée par privilége de Bailleur de fonds, lequel acte de vente fut enrégistré au même Bureau d'Enregistrement, le 31 Décembre, 1864;

"Considérant que par l'effet de la dite vente ainsi que de l'indication de paiement y exprimée en faveur de la demanderesse, et de l'enregistrement du dit acte, la dite demanderesse, appelante, est demeurée aux droits du dit Lebrun dit Laforet, et partant créancière personelle du dit Joseph Charbonneau, en la dite somme de $1,000 et intérêts, avec hypothèque de Bailleur

de fonds sur la dite somme, à compter de la date du dit acte ;

"Considérant qu'en Juin, 1876, cette terre a été saisie sur Charbonneau, à la poursuite de Dame Lucena David *et al.* dans une cause devant cette Cour, sous No. 326, dans laquelle la dite Dame Lucena Davis *et al.* étaient demandeurs contre le dit Charbonneau, et fut vendue suivant la loi, par le Shérif de ce district, le 21 Octobre, 1876, à un nommé F. X. Charbonneau, pour $3,500, qui furent rapportées en Cour par le Shérif, ensemble avec le Certificat des hypothèques enregistrées contre la dite terre, lequel Certificat fourni par le défendeur intimé en sa dite qualité de registrateur du Comté des Deux-Montagnes, suivant la loi, à la demande du dit Shérif ou de son député, et portant la date du 13 Décembre, 1876, ne faisait aucune mention, contrairement à la loi, de l'hypothèque de $1,000 créée sur la dite terre, en vertu du dit acte de vente ;

"Considérant que le 23 Décembre, 1876, le protonotaire prépara son rapport de collocation et distribution, colloquant les autres créanciers hypothécaires sur la dite terre mentionnée au dit certificat, suivant leur rang, le dit rapport homologué le 8 Janvier, 1877 ;

"Et considérant qui si le dit défendeur intimé en cette cause eut mentionné dans son certificat des hypothèques qui grevaient le dit immeuble, celle de la dite appelante, ainsi que par la loi il était tenu de le faire, la dite appelante aurait été colloquée pour la somme de $1,000 courant, montant en capital de son obligation du 4 Août, 1863, avec les intérêts sur icelle à 8 pour cent du 1er Mai, 1876, ainsi que demandé, au 21 Octobre, 1876, jour du décret en justice, et que c'est par la faute du dit intimé que la dite appelante n'a pas été payée de sa dite créance ;

"Et considérant qu'aux termes de l'art. 1053, l'intimé est responsable du préjudice causé à l'appelante par sa négligence, et qu'il est tenu de la remettre dans la même position qu'elle aurait été si sa créance eut été mentionnée au dit certificat, et qu'ainsi il est tenu de lui payer les sommes qu'elle aurait touchées sur le dit prix de vente ;

"Et considérant que la dite appelante n'était pas tenue de discuter les autres biens de son débiteur ou autres obligés à sa créance, les dommages qu'elle réclame étant constatés par le fait qu'elle aurait touché le montant de sa créance, et qu'elle n'a pu le faire, par la faute et la négligence de l'intimé ;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure, siégeant dans le district de Terrebonne, le 24me jour de Mars, 1879 ;

"Cette Cour casse et annule le dit jugement du 24 Mars, 1879, et procédant à rendre le jugement qu'aurait dû rendre la dite Cour Supérieure, condamne le dit intimé à payer à l'appelante la somme de $1,037.94, savoir celle de $1,000 pour le capital de la dite obligation, et celle de $37.94 pour intérêt au taux de 8 pour cent du 1er Mai, 1876, ainsi que demandé par les conclusions de la déclaration, au 21 Octobre, 1876, jour de décret en justice, avec intérêt sur la dite somme de $1,037.94 au taux de 6 pour cent à compter du 23 Janvier, 1877, date à laquelle la dite appelante aurait touché les dits deniers, si sa créance n'eût pas été omise dans le dit certificat ; en par la dite appelante subrogeant le dit intimé à son droit de recouvrer la dite somme de $1,037.94, avec intérêt comme susdit, de Henri Paul Lebrun et Joseph Charbonneau ou leurs représentants."

Judgment reversed.

Judah & Branchaud for Appellants.

Filion & Champagne ; Lacoste, Globensky & Bisaillon for Respondent.

SUPREME COURT OF CANADA.

JUNE SESSIONS, 1880.*

NORTH ONTARIO CONTROVERTED ELECTION.

WHEELER, Appellant, and GIBBS, Respondent.

Promise to pay legal expenses, sub-sec. 3, *sec.* 92, *The Dominion Elections Act*, 1874.

Appeal from a judgment of Mr. Justice Armour, deciding that the appellant had been personally guilty of bribery within the meaning of sub.-sec. 3, sec. 92, of the Dominion Elections Act, 1874, "for having agreed and promised to pay the expenses of one Hurd, a voter and a professional speaker." It was admitted Hurd addressed meetings in the interest of appellant, and during the time of the election made no demand for expenses except on one occasion; when, being unexpectedly without money, he asked for and received the sum of $1.50 for the

*Head notes to reports to appear in Supreme Court Reports. By G. Duval, Esq.

purpose of paying the livery bill of his horse.

Held, that the weight of evidence showed that the appellant only promised to pay Hurd's travelling expenses, *if it were legal to do so*, and such a promise was not a breach of sub.-sec. 3, of sec. 92, of the Dominion Elections Act, 1874.

The question, whether or not under the law, candidates may or may not legally employ and pay for the expenses and services of canvassers and speakers, the Chief-Justice said it was unnecessary to determine as the appellant had not paid Hurd's expenses.

Hodgins, Q.C., for appellant.

Hector Cameron, Q.C., and *McCarthy, Q.C.*, for respondent.

SELKIRK CONTROVERTED ELECTION.

YOUNG, Appellant, and SMITH, Respondent.

Dominion Election Act, sec. 98.

Held, That the term "six next preceding sections," in the 98th sec. of The Dominion Controverted Elections Act, 1874, means the six sections preceding the 98th, and that the hiring of a team to convey voters to the polls, prohibited by the 96th section is a corrupt practice, and will void an election if an agent is proved to have intentionally hired a team for that purpose.

Hector Cameron, Q.C., for appellants.

C. Robinson, Q.C., and *Bethune, Q.C.*, for respondent.

FARMER, Appellant, v. LIVINGSTONE, Respondent.

Letters Patent—Parliamentary title—Equitable defence.

Appeal from a judgment of the Court of Queen's Bench for the Province of Manitoba. The action was one of ejectment, to recover possession of S. W. of sec. 30, 6 Township, 4 Range Manitoba, from defendant who had applied for a homestead entry on the lot in question, and paid a fee of $10, but who was subsequently informed by the officers of the Crown that his application could not be recognised, therefore was refunded the $10 he had paid. The appellant, at the trial, put in, as proof of his title, Letters Patent under the great seal of Canada, granting the land in question to him in fee simple. At the trial, the defendant was allowed, against the objection of the plaintiff's counsel, to set up an equitable defence and to go into evidence for the purpose of attacking the plaintiff's patent, as having been issued to him in error, and by improvidence and by fraud; and the Court of Queen's Bench in Manitoba

Held, that the defendant had established his right to have the said patent set aside, and that the defendant had become seized and possessed of a Parliamentary title to a homestead right.

On appeal to the Supreme Court this judgment was reversed, and it was

Held, that under the practice which prevailed in England in 1870, which practice was in force in Manitoba under 38 Vict. c. 12, sec. 1 (Man.), such defence could not be set up, and that the plaintiff was not bound to offer evidence in support of said Letters Patent, if they were not assailed by "action, bill or plaint," under 35 Vic. c. 23, sec. 69.

Bethune, Q.C., for appellant.

J. A. Boyd, Q.C., for respondent.

PARSONS, Appellant; and THE STANDARD FIRE INSURANCE COMPANY, Respondents.

Insurance—Prior and subsequent Insurance.

The question upon which the appeal was determined was whether or not the appellant being insured in the Western Insurance Company, to the extent of $2,000, which formed a portion of a sum of $8,000, further insurances mentioned in the Policy sued upon, having allowed the Western's Assurance Policy to expire, could insure for the same amount in the Queen Insurance, without the consent of the respondent's company.

The policy had endorsed upon it the following conditions: "The company is not liable for loss, if there is any prior insurance in any other company, unless the company's assent appears herein, or is endorsed thereon, nor if any subsequent insurance is effected in any other company, unless, and until, the company assent thereto in writing signed by a duly authorized agent."

Held, on appeal, that as the policy on its face allowed additional insurance to the amount of $8,000 over and above the amount covered by the policy sued on, the condition as to subsequent insurance must be construed to point to *further* insurance beyond the amount so allowed, and not to a policy substituted for one of like amount allowed to lapse.

D'Alton McCarthy, Q.C., for appellants.

Bethune, Q.C., for respondents.

PETERKIN, Appellant, and MCFARLANE ET AL., Respondents.

Discretionary power of Court of Appeal to allow amendments—Supreme Court will not interfere.

The Court of Appeal for Ontario, on an appeal from a decree of SPRAGGE, C., who had refused a defendant who admitted the plaintiff's right to redeem certain property, but alleged that he was a purchaser for value without notice, leave to amend in order that he might plead the Registry Act, *held*, that the amendment should have been allowed, and that the Court would allow the amendment under the Administration of Justice Act, s. 50.

On appeal, the Supreme Court

Held, that the Legislature of Ontario having thought fit to invest all the Courts in the Province with a discretionary power in matters of amendment, this Court will not fetter that power by entertaining an appeal from an order of the Court of Appeal for Ontario, made in the exercise of such discretionary power.

J. A. Boyd, Q.C., and *Atkinson*, for the appellants.

Bethune, Q.C., and *Skead*, for respondent.

MCQUEEN, Appellant; and THE PHŒNIX MUTUAL INS. COMPANY, Respondents.

Insurance—Notice—Assent—Part of loss payable to creditors—Right of action.

Appeal from a judgment of the Court of Appeal for Ontario.

On the 19th Nov., 1877, the defendant's agent issued to the plaintiff a thirty days' interim receipt, subjecting the insurance to the conditions of the defendants' printed form of policy then in use, the fourth condition being as follows: "If the property insured is assigned without a written permission endorsed thereon by an agent of the company duly authorized for such purpose, the policy shall thereby become void."

Before the expiration of the thirty days, and before the issue of a policy, plaintiff assigned to one McKenzie and others in trust for his creditors the insured property and notified the company's agent of the assignment, who assented thereto, and stated that no notice to the company was necessary as the policy would be made payable to the assignees. The policy was issued on the 12th Dec., 1877, and the loss, if any, was made payable to George McKenzie and others, *as creditors* of the plaintiff, as their interests might appear.

Held—On appeal, that the notice of the assignment to the defendants' agent, while the application was still under consideration and before the policy was issued, was sufficient.

2. That the words "loss payable, if any, to George McKenzie," &c., operate to enable the defendant company in fulfilment of that covenant to pay the parties named; but as they had not paid them and the policy expressly stated the appellant to be the person with whom the contract was made, he alone could sue for a breach of that covenant.

Attorney-General Mowat, for appellant.

Bethune, Q.C., & Foster, for respondents.

LANGLOIS v. VALIN.

Costs—Counsel arguing his own case—No counsel fee.

Appeal from a ruling of the Registrar of the Supreme Court refusing counsel, who had argued his own case, the fee allowed to counsel by the tariff.

Held, that the Registrar's ruling was correct.

THE RIGHT HON. SIR FITZROY KELLY, Chief Baron of the Court of Exchequer, died at his residence in London, Sept. 18th. His death leaves a vacancy on the Bench worth £7,000 a year, which Mr. Gladstone will be called on to fill. Baron Kelly was born in London in 1796. He became king's counsel and was elected a bencher of Lincoln's Inn, in 1835, and a member of Parliament for Ipswich, and occupied that seat until 1841, when he was defeated. He re-entered Parliament in 1843, as member for Cambridge, which he continued to represent until 1847, having in the meantime held the office of Solicitor-General under Sir Robert Peel, and received the honor of knighthood. Baron Kelly again obtained a seat in the House of Commons, in 1852, as one of the members from Harwich. He was Attorney-General in Lord Derby's second administration, in 1858-'59, and was made Lord Chief Baron of the Court of Exchequer on the resignation of Sir Frederick Pollock in 1866. As an energetic member of the society for promoting law reforms, Baron Kelly made his influence felt. The cases by which he is best known as a lawyer are his defence of Frost and the other chartist, in 1840, his defence of the murderer of Farwell, the Quaker, in 1845, and his prosecution of Dr. Bernard, for connection with the Orsini conspiracy, in 1858.