The Legal News.

Vol. IV. JANUARY 29, 1881. No. 5.

MONEY FOUND.

The right of the finder of lost money to maintain an action for the recovery of it from a person not the owner, has been maintained by the Supreme Court of Pennsylvania in the case *Hamaker* v. *Blanchard*. The plaintiff was a female servant employed in a hotel, and while engaged in her duties she found a roll of bank notes in the public parlor. She reported the circumstance to the proprietor, who said he thought the money belonged to a guest who had transacted some business in the parlor. The servant entrusted the money to her employer that it might be restored to the supposed owner. But it appears that the guest referred to had not lost the money; the owner was not discovered, and it was admitted at the trial that he was unknown. Under these circumstances it was held that the servant could recover the money from her master. The decision appears to be in conformity to the general rule established in England by several decisions, that the finder is entitled to the article or money found against all the world but the owner, and the place where it is found does not create an exception.

PRESENTS TO JUDGES.

It is well known that the Ontario Legislature has since 1868-69 (32 Vic., c. 1, s. 1) supplemented the Dominion salaries of judges by an annual grant of $1,000 to each Superior Court judge in Ontario. The first grant was based upon the consideration that the salaries attached to the office were insufficient. The $1,000 first granted were paid, but the Act was, we believe, disallowed by the Dominion as irregular and unconstitutional, for the judges were not in any way under the control of the Ontario Legislature, and the salaries were not paid by it. The next and subsequent annual grants by this Legislature were professedly based upon the fact that the judges performed certain work in the Province as Commissioners of Devise, 33 Vic., c. 5, (Ontario). There can be no doubt that under whatever name the grant of $1,000 be disguised, it is in the nature of a present to the judge by an outside party, and since the days of Bacon, Lord Chancellor of England, who was ruined by the reception of gifts, we are not aware that there have been two opinions as to the danger of such gifts, and we believe they have been unheard of in the history of the British judiciary since the reign of James I., under whom Bacon was Chancellor. Those of our readers who read Macaulay's charming Essays when they came out some forty years ago, will remember his discussion in the article on Francis Bacon, of the question whether the gifts received by the Chancellor from suitors were in the nature of presents or bribes. As early as the Mosaic code the reception of gifts by a judge has been condemned. "Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee, throughout thy tribes; and they shall judge the people with just judgment. Thou shall not wrest judgment; thou shalt not respect persons, *neither take a gift*, &c." This injunction is in Deuteronomy, and is repeatedly found in the Scriptures. The celebrated Alexander Hamilton, in the *Federalist*, number LXXIX, says: "Next to permanency in office, nothing can contribute more to the independence of the Judges than a fixed provision for their support. * * * In the general course of human nature, *a power over a man's subsistence amounts to a power over his will*. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resource on the occasional grants of the latter." What is the difference between the case under consideration, and the judges receiving an annual grant of one thousand dollars from the city of Toronto, liable to diminution or stoppage at the whim or caprice of the City Council? Would such a grant be allowed in the governments of India? The grant is a present from a suitor. Take an instance:—The case of John Severn, appellant, and the Queen, respondent, was decided by the Ontario Court of Queen's Bench in favor of the Province of Ontario. It was taken to the Supreme Court by John Severn, and decided there in favor of the individual suitor against the Province of Ontario. (2 Supreme Court R.

70.) This matter was discussed in the Ontario Legislature in February, 1879, and it was then unanimously agreed by the Legislature as follows:—"That a representation ought to be made to the Dominion Government with a view to said allowance being hereafter assumed by the Dominion, and said allowance ought not to be continued as to appointments hereafter made." We are curious to know what correspondence has taken place between the Ontario Government and the Dominion Ministers on the subject, and whether any steps have been decided upon to remedy the anomalous position of the Ontario judiciary.—*Gazette, Montreal.*

NOTES OF CASES.

EXCHEQUER COURT OF CANADA.*

OTTAWA, Jan. 12, 1881.

Coram FOURNIER, J.

DOUTRE, suppliant, and THE QUEEN, defendant.

Treaty of Washington—Employment and remuneration of Canadian Counsel—Right of Counsel to recover by Petition of Right—35 Vic. c. 25.

Under Article 25 of the Treaty of Washington it is provided: "that each of the high contracting parties shall pay its own commissioner "and agent or counsel; all other expenses shall "be defrayed by the two Governments in equal "moieties."

By 35 Vic. c. 25 (D.) the Fisheries Articles of the Treaty of Washington were made part of the law of Canada, and a Queen's Counsel residing in the city of Montreal was one of the Canadian Counsel before the Commission sitting at Halifax. There was evidence showing that the agreement entered into between the Minister of Marine and Fisheries and the suppliant at the city of Ottawa, was to the following effect: that the suppliant was to receive $1,000 per month on account of his expenses and services whilst the Commission was sitting at Halifax, and that a further sum, to be settled upon after the award of the Commissioners, would be paid. The suppliant removed with his family from Montreal to Halifax, and was exclusively engaged in connection with this matter for 240 days. The Government paid suppliant $8,000, and by his petition the suppliant claimed that the amount received only paid his expenses, and that he was entitled to a further sum of $10,000 for the value of his services. The amount involved before the Commission was $12,000,000, and the amount awarded in favor of Canada was $5,500,000.

Held, 1. That this agreement constituted a valid contract, and that a Petition of Right did lie to recover the amount due him under such agreement.

2. That the agreement entered into having been made at the city of Ottawa, the rules of evidence in force in the Province of Ontario were applicable, and suppliant's evidence on his own behalf was therefore admissible.

3. That as the evidence adduced proved that the remuneration received by the suppliant, when engaged as counsel in important cases, was $50 per day and $20 for expenses, when his services were required outside of his own Province, the Court would grant him $8,000 out of the $10,000 claimed by his petition, being at the rate of $50 per diem and $20 for expenses, for the 240 days he was employed before the Commission.

Haliburton, Q. C., and *Ferguson*, for suppliant.
Lash, Q. C., and *Hogg*, for the defendant.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 17, 1880.

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

LONGPRÉ et al. (contestants below), Appellants, and VALADE (opposant below), Respondent.

Registration—Resiliated Deed.

The registration of a deed of sale of an immoveable, by a creditor of the vendee, after it has been cancelled by the parties to it, without any fraudulent intention, will not revive or give effect to it, so as to enable the creditor to seize the property in the possession of the vendee.

The appeal was from a judgment of the Superior Court, Montreal, Jetté, J., May 31, 1879, maintaining an opposition to the seizure of an immoveable. The facts were these: The appellants obtained judgment against one Corbeille, and on the 7th Aug. 1878, took out execution and seized a lot of land in Lachine. The respondent, Valade, filed an opposition alleging that on the 9th May, 1877, he had sold the lot

* Head note to Supreme Court Report. By Geo. Duval, Esq.

in question to Corbeille, but that on the 8th May, 1878, Corbeille had retroceded it to him; that neither of these deeds had been registered, and that Corbeille had no right of ownership at the time the lot was seized.

The appellants then discontinued the seizure, but immediately registered the deed from opposant to Corbeille, and then took out a new writ of execution, and two days later, the opposant registered the deed of retrocession. He subsequently filed an opposition to the second seizure. The present appellants contested this opposition, but the contestation was dismissed by the following judgment of the Court below:

"La cour, etc.....

"Considérant que l'acte de vente du 9 mai 1877, consenti par l'opposant au défendeur F. Corbeille, n'a conféré à ce dernier de droits sur l'immeuble saisi en cette cause que tant qu'il a été en existence, savoir, jusqu'à la date de la rétrocession faite par le dit Corbeille au dit opposant, le 8 mai 1878;

"Considérant que par cette rétrocession le titre du dit Corbeille à la propriété du dit immeuble s'est trouvé complètement annulé et anéanti;

"Considérant que l'enregistrement que les demandeurs ont fait faire du dit acte du 9 mai 1877, après son annulation et anéantissement par la rétrocession susdite et avec pleine connaissance de la dite rétrocession, n'a pu faire revivre le dit acte et conférer au dit défendeur Corbeille des droits de propriété dans le dit immeuble auquel il n'avait plus aucun titre;

"Considérant que l'article 2085 du Code Civil ne peut être invoqué par les demandeurs, attendu qu'ils n'ont acquis aucun droit sur l'immeuble en question pour une valeur ou considération nouvelle par eux donnée depuis la dite rétrocession;

"Considérant qu'il n'a pas été prouvé que le dit acte de rétrocession ait été fait par fraude, mais qu'il a été fait de bonne foi entre le défendeur et l'opposant;

"Considérant que par suite du dit acte de rétrocession l'opposant est redevenu dès le dit jour 8 mai 1878, propriétaire de l'immeuble saisi en cette cause, et l'était lors de la dite saisie, et que par suite il est bien fondé à demander main-levée de la dite saisie de son immeuble;

"Renvoie la contestation de la dite opposition et maintient la dite opposition, déclare la dite saisie du dit immeuble nulle et de nul effet, et en donne main-levée au dit opposant; le tout avec dépens," etc.

In appeal, the judgment was confirmed.

RAMSAY, J. I concur in the judgment that has just been rendered. It seems to me to be unquestionable that registration will not revive a deed which has been cancelled by the parties to it. Registration gives effect to rights, it does not create them. The legal title was not in Corbeille at the time of the seizure. Again, there is no evidence of fraud. It seems that no money passed either at the time of the sale or of the retrocession, so the transaction in no way affected the solvability of Corbeille. But we are told the object of the sale was to commit a fraud on the law by giving a seeming qualification to Corbeille to admit of his being a magistrate. If this were a fraud, it is not such a fraud as would affect the opposants. I may, however, say that there is no fraud at common law in procuring property for the purposes of obtaining a qualification, and the consideration is not of any consequence.

Judgment confirmed, Cross, J., dissenting.

Longpré & David, for Appellants.

P. Pelletier, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 17, 1880.

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

DONALDSON (deft. below), Appellant, and

CHARLES (plff. below), Respondent.

Action in Ejectment—Procedure — Incidental demand.

The lease ran from 1st May, 1879, to 1st May, 1880; held, an action instituted 1st May, 1880, was premature, the last day of the term belonging wholly to the debtor.

To the principal demand in ejectment an incidental demand for damages (for illegally remaining in possession after 1st May) was subsequently added, and the defendant pleaded to the incidental demand, asserting his right to remain in possession. Held, that although the principal demand was premature and inadmissible, and the incidental demand contained no conclusion for ejectment, yet the incidental demand might, under the issue joined, be treated as if it were

incorporated in the principal action, so as to sustain a judgment of expulsion.

The appeal was from a judgment of the Superior Court, Montreal, Jetté, J., May 25, 1880, as follows :

La cour....

" Considérant que la demanderesse par sa demande principale requiert l'expulsion du défendeur son locataire, de la maison à lui louée par bail en date du 19 Septembre 1878, et continué pour une année de plus à compter du 1er Mai 1879 au 1er Mai 1880, la dite maison décrite comme suit: " That certain three story stone store, &c." et ce pour les raisons suivantes, savoir : 1o défaut de paiement du loyer du mois d'Avril, $50 ; 2o défaut de paiement de la taxe d'eau, $29.70 ; 3o coût d'une vitre de l'étalage ou de la vitrine du magasin loué, brisée par le défendeur, $50, et que par sa demande incidente la demanderesse invoque en outre la détention illégale par le défendeur de la dite maison, après l'expiration du bail à lui consenti, et réclame en conséquence en addition aux conclusions de sa première demande des dommages s'élevant à $300 à raison du tort souffert par son nouveau locataire, vû l'impossibilité où il a été de prendre possession de la dite maison depuis le 1er Mai par le fait du défendeur ;

" Considérant que le défendeur a plaidé à ces deux demandes disant : quant au loyer, que la demanderesse était sans droit pour le lui demander, le 1er Mai, le terme qu'il avait pour le payer n'étant pas échu ; quant à la taxe d'eau, qu'elle n'est pas due à la demanderesse mais à la ville, et que le défendeur l'a payée à qui de droit ; quant à la vitre brisée, qu'elle l'a été par un défaut de construction de la maison louée et non par la faute du défendeur, qui par suite n'est pas responsable du dommage souffert par la demanderesse en conséquence ; enfin que par un nouveau bail intervenu entre l'agent autorisé de la demanderesse et lui, il est en droit de garder la dite maison pour une autre année du 1er Mai courant au 1er Mai 1881, et que par suite il n'est pas responsable des dommages soufferts par le second locataire à qui la demanderesse a pu louer de nouveau le dit magasin ;

" Considérant que la prétention du défendeur quant au loyer réclamé est bien fondée ; qu'aux termes du bail invoqué, le loyer n'était dû que le 1er Mai ; que le dernier jour du terme appartient en entier au débiteur, et que l'action de la demanderesse intentée ce jour-là était prématurée, et que la consignation que le défendeur a faite du dit loyer au greffe de cette cour est valable et suffisante ;

" Considérant que la taxe d'eau n'était pas due à la demanderesse, qu'elle n'avait aucun droit de la réclamer du défendeur, et que ce dernier justifie l'avoir payée à qui de droit ;

" Considérant qu'il est établi en preuve que la vitre dont la demanderesse réclame le coût n'a pas été brisée par le fait et la faute du défendeur, mais bien par suite d'un vice de construction de la maison louée, dont le défendeur ne peut être responsable ;

" Considérant que la demanderesse ne pourrait avoir droit à des dommages contre le défendeur, pour la détention illégale par ce dernier de la maison en question, qu'en autant que ces dommages seraient réalisés et constatés contradictoirement, et que dans l'espèce aucune telle réclamation n'est établie, renvoie les diverses prétentions de la demanderesse à raison de tout ce que dessus. Mais considérant que le défendeur n'a pas prouvé avoir obtenu de la demanderesse ou de son agent autorisé un nouveau bail de la dite maison pour une autre année à compter du 1er Mai courant (1880), et que par suite il est resté en possession de la dite maison ou magasin sus-décrit illégalement après le temps accordé par la loi pour déménager, depuis le 1er Mai courant ;

" Condamne le défendeur à délaisser et livrer à la demanderesse, sous trois jours de la signification du présent jugement les lieux sus décrits, en faisant place nette ; sinon, et le dit délai expiré, sera le dit défendeur expulsé des dits lieux par main de justice, les biens, meubles et effets qui s'y trouveront jetés sur le carreau, et la demanderesse mise en possession et jouissance paisible des dits lieux. Et la cour, vû les prétentions erronées des deux parties, les condamne à payer chacune leurs frais, condamnant néanmoins spécialement la demanderesse à supporter les frais d'enquête occasionnés par l'examen des témoins Houghton, Macdonald, Tighe et Chester produits par elle, et Philbin, McArthur, Haycroft, Lee, Baldwin et Ste. Marie produits par le défendeur ; et condamne le défendeur aux frais d'enquête occasionnés par l'examen des témoins suivants, savoir : le défendeur lui-même, MacDonald, Cushing et la demanderesse, et la cour réserve à cette dernière tout recours en dommages que

de droit, s'il y a lieu, à raison de la détention de la dite propriété sans droit après l'expiration de son bail."

RAMSAY, J. The appellant leased a house from the respondent, who brought an action seeking the expulsion of the appellant and claiming rent, water-rate, and damages for broken glass. This action was instituted on the 1st May, 1880, the day on which the rent fell due. During the proceedings, and subsequently to the 1st of May, respondent instituted an incidental demand for damages suffered by her, owing to appellant's detention of the property after the expiration of the lease, and adding a special conclusion for damages, but without renewing the conclusion of the original demand for expulsion. Appellant, by his plea to the incidental demand, asserts his right to remain in possession. The principal demand was rejected by the Court below, because the rent was not due when the action was brought, because the taxes were not due to the Plaintiff but to the Corporation of the city, and because the breaking of the glass was attributable, according to the evidence, to the working of the house, and not to any act of the Appellant. The damages alleged in the incidental demand, were said to have been suffered by one Tighe, the tenant of Respondent, and therefore they were refused, but the Court granted the prayer of the principal demand because the Appellant had completed what would otherwise have been an imperfect issue by his allegation that he had a right to remain in possession of the premises after the 1st May, when his lease was plainly at an end. Appellant now seeks to obtain the reversal of this judgment by saying that the incidental demand had no connection with the principal demand, and was therefore wholly inadmissible; and accordingly, that the principal demand being rejected, there were no conclusions to justify a judgment for expulsion. There can be no doubt that the procedure is irregular in the extreme, as was remarked by the learned judge in the Court below. Nevertheless, he held that the incidental demand was only an addition to the principal demand, and that as the issue was complete by the plea, as to whether appellant should be expelled or not, he could decide it without going beyond the whole conclusions. We cannot say that this decision is wrong. The judge had all the issues before him, and the whole evidence as perfectly as it ever could be brought before him in another suit, and we think he was justified in treating the incidental demand as incorporated in the principal demand, it having been so treated by both parties; although the ordinary practice is undoubtedly to put separate conclusions to the incidental demand.

The appeal is therefore dismissed with costs.

Judgment confirmed.

Archambault & David, for Appellant.

Ritchie & Ritchie, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 24, 1880.

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

DARLING et al. (defts. below), Appellants, and BARSALOU et al. (plffs. below), Respondents.

Trade Mark—Resemblance.

B. & Co. registered a trade mark for the laundry soap made by them, the mark consisting of the imprint of a horse's head, with the words "The Imperial Laundry Bar" stamped on the face of each piece, and the words "J. Barsalou & Co., Montreal," on the opposite side. D. & Co. subsequently manufactured a soap with the imprint of the head of a unicorn and the words "A. Bonin, 115 St. Dominique street, Very Best Laundry" on the face, (without any words on the opposite side). Held, that there was no resemblance or similarity between the marks which could deceive persons of ordinary intelligence, and D. & Co. could not be restrained from continuing the manufacture of their soap.

The appeal was from the following judgment, rendered by the Superior Court, Montreal, Rainville, J., on the 30th of April, 1879:

"La cour, etc.

"Considérant que les demandeurs ont prouvé les allégations de leur déclaration;

"Considérant que la marque par les défendeurs sur le savon par eux manufacturé et vendu est une imitation frauduleuse de la marque de commerce des demandeurs, et de nature à tromper les acheteurs en général;

"Considérant que l'impreinte de la licorne est faite de manière à représenter la tête d'un cheval plutôt que celle d'une licorne;

"Considérant qu'il est prouvé que des ache-

teurs ont été trompés sur la ressemblance des dites deux marques ;

" Déboute les défendeurs de leur défense, et les condamne à payer aux demandeurs la somme de $100 de dommages, avec interêt, &c."

The action was brought by the respondents, claiming the sum of $2,000 damages for infringement of a trade mark on soap. The plaintiffs, J. Barsalou & Co., alleged that they had been manufacturing soap for several years past in Montreal, and in 1877 had registered a trade mark for the article manufactured by their firm ; that the distinctive feature of this trade mark was a horse's head, which was impressed on each piece of the soap ; and that the defendants, Darling & Brady, had imitated this mark with the intention of deceiving the public into buying the soap made by them instead of Barsalou's soap.

The appellants pleaded to this suit, that the soap manufactured by them was not an imitation of Barsalou's soap ; that it bore the imprint of the head of a unicorn, and not that of a horse ; that there was no similarity in the inscription, the Barsalou soap having the words, " The Imperial Trade Mark Laundry Bar " stamped on the face of each piece, with the name " J. Barsalou & Co., Montreal," on the opposite side ; whereas the soap manufactured by appellants had the words " A. Bonin, 115 St. Dominique street, Very Best Laundry," on the face, without any words on the opposite side.

The evidence showed that the respondents' trade mark was the imprint of a horse's head, with the words, " The Imperial Laundry Bar," stamped on the face, and the words " J. Barsalou & Co., Montreal," on the opposite side. The soap manufactured by appellants had the head of a unicorn, with the words " A. Bonin 115 St. Dominique St. Very Best Laundry," on the face, without any words on the opposite side. The arrangement of the words was also different.

MONK, J., pointed out that the imprint and general appearance of the two heads differed considerably, besides the addition of the horn to the head of the unicorn. There was no resemblance between the two marks and the accompanying words that could deceive any one with ordinary intelligence. Moreover there was no evidence that the respondents had suffered any damage.

The judgment in appeal is as follows :—

" Considering that it is in evidence that the print used by appellants on their soap is not the same as the one used by respondents in conformity to their trade mark, and there is no such resemblance or similarity between the two that the difference cannot easily be noticed by any person with ordinary care and intelligence ;

" And considering that there is error in the judgment rendered by the Superior Court, at Montreal, on the 30th day of April, 1879 ;

" This Court doth reverse the said judgment of the 30th of April, 1879 ;

" And proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the action of the respondents, and doth condemn them to pay to the appellants the costs incurred as well in the Court below as on the present appeal."

Judgment reversed.

Cruickshank & Cruickshank, for Appellants.
Beique, Choquet & McGoun, for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 19, 1880.

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

LA SOCIÉTÉ PERMANENTE DE CONSTRUCTION (plff. below), Appellant, and ROBINSON (deft. below), Respondent.

Delegation—Acceptance—Registration.

The appeal was from a judgment of the Superior Court, Montreal, Papineau, J., Feb. 28, 1879, reported in 2 Legal News, p. 148, where the facts will be found.

The appellant submitted the following propositions :—

1. L'engagement contracté par Robinson de payer à l'acquit de Léonard la créance de la Société appelante a, *ipso facto*, engendré un lien de droit entre Robinson et elle, et a, *de plano* et sans acceptation antecédente, ouvert en faveur de cette dernière, un droit d'action contre le premier.

2. S'il était besoin d'acceptation, une acceptation expresse n'était pas nécessaire, une acceptation implicite ou tacite était suffisante.

2. Cette acceptation s'infère dans l'espèce de l'acte de vente par Leonard à Robinson.

RAMSAY, J. The first proposition of Appellant seems to be that by the form of Respond-

ent's undertaking, it was not only an indication of payment, but an absolute obligation in favor of appellant, which did not require acceptance. I am not aware that there is any substantial distinction between the delegation, as used in the Code (art. 1173), of a new debtor, and the *indication de paiement*, as used in the Code (art. 1174). Neither creates novation. Both are within art. 1029, that is, both require acceptance. This seems always to have been held. Directly in the case of *Patenaude & L'Erigé dit Laplante*, indirectly in the case of *Mallette* v. *Hudon*. It is the common law rule of all donations that they must be accepted, and what is the giving of a debtor, without consideration, else than a donation? It is the donation of extra security. It is no answer to say that the action may be brought without previous acceptance. That is clear, although there are contrary decisions. The action is sufficient acceptance, if in time. I, therefore, think appellant's first proposition is untenable. His second proposition appears to me to be correct; but when he comes to the third proposition, that the registration is evidence of acceptance, I must again dissent from appellant's view. It is evident that the registration by another, being no act of the creditor, cannot be a declaration of his will, and consequently would only be a fictitious acceptance, which is not what is contemplated by law. But the 7 Vic., cap. 22, really amounts to this, that the right of the creditor shall be maintained, no matter who carries the Deed to the Registrar. This would probably have been the decision of the Courts, if there had been no such clause. Publicity was the object of the Registration law, and that was acquired by the transcription in the public register. The reasoning on the Edict of 1711 does not appear to me to be conclusive. The question of the necessity of opposition introduces new elements which it is not necessary now to discuss. It seems to have been the opinion of the Court in *Patenaude & L'Eriger* that the registration was an acceptance. In *Hudon & Mallette* a doctrine incompatible with that was held. It was there held that the direct action on the debt could be maintained by the creditor on a registered deed if there was no acceptance.

At the argument some stress was laid on the fact that Robinson had made payments to appellant. It is clear Robinson's act would not tell more against him than his deed with Leonard. It is the act of the appellant in receiving this money that is important, and that must be drawn from the receipts. The doctrine on that point seems to have been properly laid down in *Poirier & Lacroix* (6 L. C. J.) The receipts in this case do not imply an acceptance of the new debtor, but only of the money he brought on account of the debt of the original debtor. No acceptance, therefore, can be gathered from the simple fact of the payment. It is almost too elementary to require special remark, that no act of the person indicated as the person to pay can amount to an acceptance, else the rule that acceptance is necessary would disappear.

The letters certainly do not of themselves form an acceptance. But we are asked to draw from the respondent's letters that the letters from the appellant were an acceptance. If the answer contained clearly the proposition accepted, we might not require the production of the letters themselves. But the letters are not conclusive.

Judgment confirmed.

Loranger, Loranger, Pelletier & Beaudin for Appellant.

Robertson & Co. for respondent.

SUPERIOR COURT.

MONTREAL, June 30, 1880.

Before PAPINEAU, J.

DESJARDINS et vir v. GRAVEL et ux., & LANGEVIN dit LACROIX, opposant.

Sheriff's Sale—Rights of Lessee.

The lessee of an immoveable property about to be sold by sheriff's sale, has no right to make an opposition afin de charge to the sale, based on a notarial lease of the property to himself, prior to the seizure.

The plaintiff, a hypothecary creditor, having obtained judgment against the defendant, caused an execution to issue against the immoveables hypothecated in his favor.

The opposant, lessee of the premises under a notarial lease for a year, duly registered, filed an opposition *a fin de charge*, based on his lease prior to the seizure.

The plaintiff contested the opposition by a *défense en droit*.

PAPINEAU, J., maintained the contestation and dismissed the action, the judgment being as follows:

"La cour, etc.

"Considérant que la demanderesse, creancière des défendeurs, n'est pas tenue en loi d'entretenir le bail fait par ses débiteurs et auquel elle n'a pas été partie;

"Considérant que ce bail ne peut pas empêcher la demanderesse de faire saisir et vendre l'immeuble pendant ce bail dont la durée n'excède pas un an;

"Considérant que si la vente par décret ne dépouille pas le débiteur saisi de sa jouissance de l'immeuble saisi jusqu' à l'adjudication, elle l'en dépouille certainement du moment de l'adjudication, et met fin au bail, en mettant fin à la jouissance du bailleur, qui, de son coté, ne peut plus faire jouir son preneur;

"Considérant que si d'un côté le bail en cette cause est de fait antérieure à la saisie réelle des immeubles des défendeurs, de l'autre côté ce bail n'a conféré aucun droit de propriété à l'opposant dans, ni aucune charge sur les immeubles loués, et qu'il ne possédait même ceux-ci que pour les défendeurs et au nom de ces derniers, et dans le seul but et pour la seule fin d'en avoir la jouissance accordée par le bail en question;

"Considérant que l'opposant, ne dérivant sa jouissance que des défendeurs, ne peut l'exercer plus longtemps que la loi ne permet à ceux ci de la conserver eux-mêmes, c'est-à-dire après l'adjudication ou décret;

"Considérant que l'opposant, en demandant de conserver sa jouissance au-delà du temps de la vente par décret jusqu' à la fin de la durée naturelle de son bail, a demandé ce qu'il n' a pas droit d'obtenir;

"Considérant d'ailleurs qui si toutefois il était possible à l'opposant de faire cette demande, il ne pourrait être reçu à la faire qu'en offrant pour le profit du créancier saisissant une partie du loyer proportionnée au temps que le bail aurait à courir après l'adjudication, et qu'il ne l'a pas offerte;

"Considérant que le droit de l'opposant se résout, par la vente ou décret des immeubles à lui loués, en une créance privilégiée sur le produit de ces immeubles pour la plus valeur donnée par ses travaux aux dits immeubles, conformément à l'Art. 2010 du C. C., et que sa dite opposition afin de charge est mal fondée, et que la contestation ou défense en droit faite par la demanderesse à l'encontre de la dite opposition est bien fondée;

"La Cour maintient la dite défense en droit, &c."

Opposition dismissed.

Loranger, Loranger & Beaudin for opposant.

R. & L. Laflamme for plaintiff contesting.

SUPERIOR COURT.

MONTREAL, Jan. 15, 1881.

Before PAPINEAU, J.

DELAND et al. v. DESRIVIERES, and CARTER, T. S.

Things exempt from seizure—Alimentary Debt— C. C. P. 558.

Objects which are exempt from seizure by reason of being given as aliment, may nevertheless be seized and sold for an alimentary debt.

The defendant contested the *saisie-arrêt* before judgment which had issued in the cause,—among other reasons, because by the condition of the will of defendant's father the thing seized was *insaisissable*.

The plaintiffs answered that the thing seized was not exempt from seizure for a claim of the nature of plaintiffs', being for provisions sold to defendant for the subsistence of his family.

PAPINEAU, J. Les choses achetées des demandeurs étaient en général des choses alimentaires. Cela suffit pour maintenir la saisie, d'après l'art. 558 C. P. C., dernier paragraphe. Nous n'avons pas à déterminer sur cet incident pour quelle portion la créance des demandeurs leur donnait droit de saisir la pension alimentaire que le père du défendeur lui avait légué sous condition d'inaliénabilité et d'insaisissabilité. Il suffit qu'une partie seulement soit le prix d'aliments fournis pour ne pas déclarer la saisie nulle.

Petition rejected.

Trudel & Co., for plaintiffs.

Geoffrion, Rinfret, Dorion & Laviolette for defendant.

GENERAL NOTES.

The sudden and unexpected demise of Mr. Keeler, member for East Northumberland, is announced. Mr. Keeler was one of the most vigorous opponents of the Supreme Court Act, and the author of a bill introduced last session, and also during the present session, for the repeal of the Act.