The Legal News.

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EXPULSION FROM CLUBS.

The appeal by Mr. Labouchère to the Courts, from the sentence of expulsion pronounced against him by the Beefsteak Club, recalls to mind a celebrated case which occurred about a dozen years ago,—we refer to the action brought by Mr. Hopkinson against the Marquis of Exeter and other members of the Conservative Club. Mr. Hopkinson had been expelled from the club for voting for certain Liberal candidates in his county. The majority against him was very large, 191 voting for his expulsion, and only 21 against it. Nevertheless, he appealed to the Courts, and asked for a declaration that so long as he should conform to the rules of the club (which he offered to do), he was entitled to its privileges and benefits. The case was argued by distinguished counsel on either side, Sir Roundell Palmer (now Lord Selborne) appearing for Mr. Hopkinson; but the Master of the Rolls (Lord Romilly) declined to interfere, because, in his opinion, the decision of the club had been arrived at, in accordance with its rules, *bonâ fide* and without caprice, and the Court had no jurisdiction to set aside that decision. The 29th rule of the club provided that it was "the duty of the committee, 'in case any circumstance should occur likely "to endanger the welfare and good order of the "club, to call a general meeting," and any member might be removed by the votes of two-thirds of the persons present at such meeting. Lord Romilly had no doubt that the Court had power to interfere, if caprice or improper motive appeared to have actuated the decision; but he said that "it must be a very strong case that "would induce this Court to interfere." (See 4 L. C. Law Journal, pp. 104–107, where the report of the case appears.) In 1878, the Rolls Court did interfere, and set aside a vote of expulsion, in the case of Major Fisher against the Army and Navy Club, it being held that the expulsion of the plaintiff had been voted without allowing him an opportunity of explanation, and that the rules had been strained to include the case.

In Mr. Labouchère's case, the expulsion has also been effected by a rather violent interpretation of club rules. The reason assigned was an article published by Mr. Labouchère in the London *Truth* respecting Mr. Lawson, another member of the club. The members adopted the view that the publication of this article, in a journal which might be brought into the club, was the same thing as if Mr. Labouchère had publicly uttered the words in the club rooms. This seems to be a fanciful view, with which it is possible that the Courts may not agree. But, on the other hand, the action of social organizations like clubs, as regards their membership, is not to be too rigidly scrutinized in a law Court. The members are entitled to some freedom of judgment. The fact of a two-thirds vote against a member affords a pretty strong presumption that his continued presence in the club will not conduce to its well-being. If, then, the case can fairly be brought under a rule to which the aggrieved person assented by becoming a member or otherwise, the Courts will probably be slow to encourage litigation which might lead to the dissolution of the society.

PROPERTY OF BANKS IN MONEY DEPOSITED.

The case of *National Mahaiwe Bank* v. *Peck*, which has recently been decided by the Supreme Court of Massachusetts, involved a point similar to that which came under the notice of the Superior Court of Montreal, in May last, in *Marler* v. *The Molsons Bank* (p. 166 of this volume), and Chief Justice Gray, of the Massachusetts court, based his judgment on the principle that was followed by Mr. Justice Sicotte in the Canadian case. The following extract from the observations of the Chief Justice states the point concisely:—"Money deposited in a bank does not remain the property of the depositor, upon which the bank has a lien; but it becomes the absolute property of the bank, and the bank is merely a debtor to the depositor in an equal amount. *Foley* v. *Hill*, 1 Phillips, 399, and 2 H. L. Cases, 28. So long as the balance of account to the credit of the depositor exceeds the amount of any debts due

and payable by him to the bank, the bank is bound to honor his checks, and liable to an action by him if it does not. When he owes the bank independent debts, already due and payable, the bank has the right to apply the balance of his general account to the satisfaction of any such debts." And, further: "When, by express agreement, or by a course of dealing between the depositor and the banker, a note or bond of the depositor is not included in the general account, any balance due from the banker to the depositor is not to be applied in satisfaction of such note or bond, even for the benefit of a surety thereon, except at the election of the banker." *Bodenham* v. *Purchas*, 2 B. & Ald. 39, 45; *Simpson* v. *Ingraham*, 2 B. & C. 65, amongst other cases, were cited.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Nov. 29, 1879.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

BROSSEAU v. CREVIER.

[From S. C. Montreal.

Capias—Bail under 825 *C.P.—Order to the defendant to surrender—The cessio bonorum.*

The judgment under Review was rendered by the Superior Court, Montreal, Mackay, J., 20 June, 1879, as follows:—

"The Court having heard the parties by their counsel upon the plaintiff's motion filed on the 9th of June instant, that inasmuch as under a writ of *capias ad respondendum* issued out of this Court in this cause against the defendant, the said defendant was arrested and taken into custody, and afterwards, while in custody of the sheriff of this district, Edouard Dorion, post office clerk, and Alfred Boisseau, gentleman, both of the city of Montreal, did on the 16th of May, 1878, severally enter into a bond towards the said sheriff to the effect that he, the said defendant, would surrender himself into the hands of the said sheriff whenever required to do so by any order of the said Court, or any Judge thereof, within one month from the service of such order upon the said defendant, or upon his sureties, and that in default thereof they would pay the amount of the judgment in principal, interest and costs; that a judgment was afterwards rendered in the said cause on the 19th of March, 1879, declaring the said writ of *capias* good and valid, and the judgment rendered in the Circuit Court of this District in favor of plaintiff against defendant on the 14th of April, 1877, to be binding, and declaring further the sum of $69.65, to wit, $49.25 amount of the said judgment, and $20.40 for costs taxed thereon, to be still due to said plaintiff, with interest on $49.25 from the 6th November, 1876, and condemning the defendant to pay the costs;—which judgment is in full force; and that inasmuch as the said defendant wholly failed to surrender himself as required by law, and, in fact, hath absconded from and left the Province of Quebec and Dominion of Canada, he be ordered to surrender himself; having examined the proceedings, and deliberated;

"Doth grant the said motion, in consequence, doth order the said Louis C. Crevier, the said defendant, to surrender himself into the hands of the sheriff of this District within one month from the service upon him or on his sureties of the present judgment and order, and in default whereof, proceedings shall be taken according to law to enforce the same."

JOHNSON, J. The question presented in this case is one of procedure; but it is also one of extreme importance as affecting the rights of persons arrested under writs of *capias;* and I am not aware that any case exactly in point has ever come up. The defendant arrested under a *capias ad respondendum* gave bail to the Sheriff on the 27th April, 1878, under article 828 of the Code of Procedure; and thereupon got his provisional discharge. On the 16th of May, after the return of the action, he gave bail under article 825. Judgment for the plaintiff supervened, and the *capias* was maintained. On the 9th of June, the plaintiff moved for an order upon the defendant to surrender himself to the Sheriff within one month of the service upon him or upon his sureties of the order to surrender. The plaintiff in his motion made a mistake which the Court below adopted in giving its order as asked for. He said that the bail given on the 16th of May was a bond *towards the Sheriff;* whereas it was no such thing; it was bail to the action under article 825, and the bond to the Sheriff was only provisional bail under article 828; but that is un-

important. The plaintiff in his motion asked for an order of surrender, and the Court granted it; and though both of them misstated the effect of the bond of the 16th of May, the bond itself is here to speak for itself, and it is under the bond of that date that the order was asked and got. The terms of art. 828 under which provisional bail was given to the Sheriff are as follows: "A defendant arrested upon a *capias* may obtain his provisional discharge by giving good and sufficient sureties to the Sheriff to the satisfaction of the latter, before the return day of the writ, that he will pay the amount of the judgment that may be rendered upon the demand, in principal, interest and costs, if he fails to give bail pursuant to article 824, or to article 825." Under this bond to the Sheriff, therefore, the defendant's obligation was to do either the one or the other of two things, either of which the law allowed him to do, at his own option; that is to say, he might have given bail within eight days after the return of the writ (or afterwards, with the leave of the Court), in conformity with article 824, which would have been bail equivalent to the old special bail, under the law as it stood before the passing of 12 Vic. c. 42, the condition of which would have been that if he left the Province without paying debt, interest and costs, his sureties should become liable; or, in the second case, he had the right to give bail under art. 825, which is the new bail to the action originally provided, in somewhat different terms, and with a further condition by section 3 of the 12 Vic., c. 42. This last bond (under art. 825), was the one he gave; and if there has been any difficulty in dealing with the point now before us, it is because the Statute which is reproduced in cap. 87 of C. S. L. C. is not completely or exactly rendered by the article 825 of the Code of Procedure. The language of the 3rd section of the 12 Vic., c. 42, and the language of the 10th section of cap. 87 of the Consolidated Statutes, are identical. They both of them contemplate a surrender to be made in either of two cases: either a surrender with reference to the provisions of the law respecting the *cessio bonorum*, or a surrender within one month after the service of an order upon the debtor, or upon his sureties. The article of the Code (825), on the other hand, merely makes the condition of the bond that the debtor will surrender when required, by an order of the Judge, within one month after service of such order upon him or upon his sureties. Therefore, there is this difference between the Statutes and the Code in this particular, viz., that the former provide for the surrender in both cases, that is, the surrender required in the proceedings upon a *cessio bonorum*, and the surrender required to fix the bail; and the article 825 only provides for the surrender required in order to fix the bail. The Statute of the 12th Vic. was a Statute which, as many members of the profession can still remember, entirely altered the old procedure under the *capias*. It was drawn by the late Chief Justice, then Mr. Lafontaine. It was entitled an Act to abolish imprisonment for debt; and, in substance, it did away with the *capias ad satisfaciendum*, and substituted an obligation on the part of the defendant to make a statement and abandonment of his property for the benefit of his creditors; and it gave the right to the plaintiff to proceed against his debtor, and to punish him if he failed to make this abandonment, or if he made it fraudulently. The statutes did not say that the defendant might give bail, as the article 825 says he may give bail. The statutes said he might give bail to "surrender himself into the custody of the sheriff whenever required so to do by an order of such Court, or of any Judge thereof, *made as hereinafter is provided*, or within one month after the service of such order on him or on his sureties." The article 825 says nothing of the surrender with reference to the *cessio bonorum*. It only provides for the surrender within one month after service of an order on a debtor, or on his sureties. The *cessio bonorum* is only compulsory in a case above $80 (which the present case is not). There is provision for the making of it in any case, if the defendant so chooses; but in cases under $80 it is granted as a privilege, and not imposed as a duty. Therefore it appears to me there would be no way of reaching the sureties unless the order granted in this case were held to be a legal order. It was said that the object of the law would be frustrated, and imprisonment for debt restored, if this order were upheld. That is not at all the case. The defendant can surrender, and can then liberate himself by making his *bilan*; but unless he does so, it appears to me quite clear that the sureties will be effectually reach-

ed if the order is served upon them. If it were otherwise, in a case below $80, a defendant might give bail, under Art. 825, to surrender, and then leave the country and snap his fingers; but under the law, as I hold it, he cannot do so, for whether he remains here to be served with the order or not is quite immaterial, if it is served on the sureties; and as he cannot be compelled to make his abandonment, the sureties themselves are interested in having this order granted, so that he may be induced to give up his property, and liberate himself and them also. I may observe, the provisions of the statutes are not repealed by the code, but on the contrary, are expressly preserved by Articles 2274 and 2275 C.C. Judgment confirmed.

Wurtele & Sexton, for plaintiff.

Doutre, Branchaud & McCord, for defendant.

SICOTTE, JOHNSON, LAFRAMBOISE, JJ.

In re MIDDLEMISS, insolvent, DARLING, assignee, JACKSON, collocated, LEDUC, contesting.

[From S. C., Montreal.

Hypothecary Creditor — Acceptance of delegation without releasing the original debtor—Restriction of the hypothec to a portion of the land.

This case came up on a contestation by Leduc of a collocation in favor of Jackson on the proceeds of certain real estate of the insolvent Middlemiss, sold by his assignee.

Leduc sold to Rice a parcel of land on which there was a hypothec in favor of Brodie (now represented by Jackson), and Leduc had made himself personally liable to Brodie for the amount. It was stipulated in the deed of sale that Rice should pay Brodie the amount of his claim. Brodie accepted the delegation, but without discharging Leduc. It was further stipulated in the deed that Rice should have the right of discharging any portion of the land from Leduc's hypothec for the unpaid balance of *prix de vente*, by paying at the rate of $400 per arpent of the portion discharged. Rice subsequently sold the land to Middlemiss, who, exercising the right of discharge which had been stipulated in the deed to his *auteur* Rice, paid a sufficient sum to Leduc on account of the purchase money, to release half the property from Leduc's hypothecary claim. Middlemiss also obtained from Brodie the release of the same portion of the property from Brodie's hypothec, which Brodie restricted to the remaining half. Middlemiss then disposed of the half so released from mortgages by exchanging it for other property. Subsequently he became insolvent, and the remaining half of the land, which he had retained, being sold by the assignee, Leduc contested Brodie's right to be collocated by preference to him on the proceeds.

JETTÉ, J., in the Superior Court, held that Brodie having accepted the delegation without discharging Leduc, novation did not take place; and the release by Brodie of half the land applied only to his hypothecary claim thereon, and did not affect Leduc's personal liability for the amount of Brodie's claim. Brodie (or his assignee Jackson) was, therefore, entitled to be collocated by preference to Leduc.

In Review, this judgment was unanimously confirmed.

Keller & McCormick for Jackson, collocated: *Wurtele, Q.C.*, counsel.

T. & C. C. DeLorimier for Leduc, contesting.

SUPERIOR COURT.

MONTREAL, Nov. 29, 1879.

PERRY v. PELL.

Saisie-arrêt before judgment not be used to compel dilatory debtors to pay doubtful debts.

JOHNSON, J. This is an action for damages for issuing a writ of attachment without probable cause. The plaintiff, being about to change his residence, advertised his household furniture for sale, and the defendant who had an account against him, and could not get paid, made an affidavit such as the law requires to get an attachment before judgment, and took his writ and sent the bailiff to seize the property; the money was paid; and afterwards Mr. Perry brought his action to test the right of the defendant to take this severe recourse against him under the circumstances. The case was very well argued before me on both sides, as to the probable grounds for the proceeding which is complained of; but it struck me at the argument that it had to be disposed of on a very plain principle that I had seen equally

plainly elucidated by one than whom none is more competent to define or to illustrate the principles of our law. I refer to the eminently practical and sensible rule laid down by Chief Justice Meredith in the case of *Powell* v. *Paterson*, reported in the 4th volume of the Quebec Law Reports, p. 192. That was a case where the defendant, who had taken the attachment complained of, acted precisely as the defendant acted in the present one. The resemblance between the two cases is not only striking, but they may be said to be positively identical cases. The only point of difference was in favor of the defendant there, and against the defendant here, for Mr. Paterson, the defendant in the Quebec case, had no personal interest whatever to serve, but was acting simply as the assignee to an insolvent estate. The general facts of the two cases are undistinguishable the one from the other. Assuming the complexion of the evidence to be what was argued by the defendant's counsel, and that this account was overdue, and payment had been repeatedly asked for; still the case of the plaintiff there was the same. The Chief Justice states this part of the case of *Powell* v. *Paterson* to have been that "very numerous applications were made for payment, plaintiff constantly promising to pay, but failing to do so; and in the month of March, 1876, an action was instituted by the defendant, as assignee of Boswell's estate, against the plaintiff. In the following month, that being about five months after the delivery of the last item in Boswell's account, the plaintiff being about to give up the business of keeping a restaurant and bar, and to change his residence to a house in the city, advertised an auction of his bar, hotel-fittings, and a lot of other goods." In rendering judgment the learned Chief Justice said: "It is contended on the part of the defendant, that as the claim was long past due; as repeated promises to pay it had been broken, and as the plaintiff was selling off without consulting his creditors in any way, the defendant had a right to swear that the plaintiff was secreting his property for the purpose of defrauding his creditors." It would be difficult to state more concisely, or at the same time, more completely, the position taken by the defendant's counsel in the present case. He said that Mr. Perry was going into a new business—that of floriculture, for which he had leased an extensive property, and that his client might never have got paid at all, if he had not taken out the attachment and got an order for his money on the auctioneer. That may have been very good tactics for getting his money; but I strongly dissent on the plainest and most logical grounds from its being any reason at all for saying that the plaintiff was *secreting with intent to defraud*; and that is what the law requires before it gives a right to attach. I might go into the details of this case to show that the circumstances negative the idea of its having been Mr. Perry's intention to defraud any one in giving up his town residence and removing to Longue Pointe; but I will merely conclude what I have to say in the very words used by the Chief Justice in the case referred to. He says: "According to my view, the defendant acted upon the erroneous, but not uncommon, opinion that the writ of *saisie-arrêt* before judgment may be used as a means of compelling dilatory debtors to pay doubtful debts; whereas the law allows it to be used only against debtors guilty of fraud, as is evident from the fact that, in order to obtain such a writ, there must be an affidavit establishing that the defendant absconds, or is immediately about to leave the Province, or is secreting his property *with intent to defraud his creditors.*"

As I have been guided by the learned Chief Justice's law in the case of *Powell* v. *Paterson*, so I will be guided also by what he said in the matter of damages; for the two cases are singularly similar. The learned Chief said that in that case there were no grounds for giving vindictive damages, and no actual damage had been suffered. I say the same here; but, he added, and I agree with him there also, "Still the plaintiff had a right to bring the action, were it only for the vindication of his character. The damages awarded ought at least to be sufficient to indemnify him for the loss of time incident to the litigation in which he has been involved by the illegal conduct of the defendant." The judgment in that case was for $20 damages; and they are the damages I give here. As to costs, they are a matter of discretion, and where damages above forty shillings sterling are given, costs, instead of following the amount of the judgment, may be allowed at a higher rate. That is the rule I

have always followed, because it appears to me that to allow a plaintiff has right on his side, and yet to punish him for exercising it, would be unjust; and that is what would take place if I gave costs as in a case of $20; so I say costs as in lowest class action in this Court. In following the law laid down in *Powell* v. *Paterson*, the case of *Shaw* v. *McKenzie*,* recurs to my mind. There I dismissed the plaintiff's action mainly because he himself informed his creditor that there might be probable cause for believing he was about to leave the country with intent to defraud him. The case of *Powell* v. *Paterson* was not cited in that case. Possibly the report had not appeared; but the plaintiff virtually contended for the same principle, though the case was not cited. There, however, there was a decisive difference from the present case. The intention to leave was admitted there: the secretion is not admitted nor proved here. In *Shaw* v. *McKenzie* the leaving being admitted, the only remaining point was the intent to defraud; and as to that, the debtor instead of specifying any time for his return, only said his creditor might get his money the best way he could, which was much the same thing as saying his intention was to do just as he pleased, without regard to the rights of the creditor who might, therefore, never get his money for years, nor perhaps at all.

Bethune & Bethune for plaintiff.
Monk & Butler for defendant.

GIRARD v. BANK OF TORONTO.

Bank—Resolution of Board of Directors—Amendment of Resolution—Possession of resolution accidentally or improperly obtained.

MACKAY, J. This is an action to have the Bank condemned to sign and complete an *acte*, before notary, granting plaintiff, who owes to the Bank a large sum of money, a delay of six years to pay in, upon certain conditions. As to these, the plaintiff says that they are all in the deed that he tenders, while the Bank insists upon the contrary, and therefore refuses to sign; $500 damages are also demanded by the plaintiff.

The Bank pleads that no treaty was concluded between the parties; that, as to a certain resolution of the directors of the Bank, and amendment of it, upon which plaintiff relies as evidence of the *acte* as tendered having been agreed to, this resolution was passed in anticipation of an *acte* to be made, the terms of which were to be settled by counsel in Montreal; that the treaty was going on long after the resolution and amendment of it had been passed, and upon that treaty a clause was insisted upon by the counsel for the Bank, which clause Girard omitted in the *acte* tendered, and has refused to agree to; that Girard has obtained by fraud possession of the resolution referred to; that the Bank never gave instructions to the notary for or about the *acte* tendered, &c.

The parties have been in treaty from early in May, 1879. On the 8th of May Mr. Smith, defendant's Montreal agent, wrote to Toronto for a resolution of the directors, such as would be required to be attached to any contract or agreement that he in Montreal might sign. Several projects of the agreement were made afterwards; what was the very first one is not proved; the resolution of the Directors of May had a few words added to it in June, viz., the words, "annexed to this resolution," meaning deed annexed. The resolution is dated May 21st. There is not another one, but in June those words were added to the one of May seemingly by the manager in Toronto. In point of fact, was there any deed project annexed to the first resolution? Mr. Smith, examined, as much as admits that a project of *acte* had been made before he sent up to Toronto for the first resolution of the directors. Did Smith send up this *acte* now attached to the resolution, Exhibit 2 of Girard? Smith is not asked as to this, and seems to have merely written for the resolution as if Girard would not be satisfied without one, *i. e.*, would not be satisfied with Smith's mere signing. The original resolution was sent, I believe, to and from Toronto without any paper annexed to it, to be used only upon treaty being finally settled in Montreal, when the Montreal agent would be called upon to sign. When the resolution was added to and sent from Toronto to Mr. Laflamme (the Bank's attorney in Montreal) it had no paper sticking to it, though a project of *acte* was accompany-

* 2 LEGAL NEWS, p. 5; 23 L. C. J. 52.

ing it. With them there was sent from the Bank's manager in Toronto a letter containing instructions to Mr. Laflamme. Was this letter competent to the Bank? It seems to me that upon the answer to this question the case must turn. The plaintiff argues that Mr. Laflamme, having sent a project of *acte* to Toronto and the original resolution, and asked for the addition to the resolution to be made, the Bank having received it, and having consented to the addition, was bound after that simply to return the *acte* and resolution for the signatures, *of that very acte*, by all the parties in Montreal. "The Manager in Toronto had no right to dictate new or additional conditions (says plaintiff), as by his letter to Mr. Laflamme of 9th of June he does." Mr. Laflamme says that in June, showing the amended resolution and the *acte* to plaintiff, both separate at the time, he told plaintiff that he had a clause to add to it. "I ought to have retained the resolution," says Laflamme, "but it remained in the possession of Girard." Girard still has it, and the negotiations have been broken off. According to Laflamme, Girard is now retaining the resolution officiously and wrongfully, intention by Laflamme or the Bank to deliver it (in the proper sense of the word) not having been. It seems to me that Laflamme had no authority to deliver the resolution and bind the Bank, but with the limitations without which the resolution has not been delivered by the Bank.

The Court holds that the 9th of June letter from the Bank Manager in Toronto to Mr. Laflamme when sending him the resolution of May, added to in June, was competent to the Bank. It has never delivered the amended resolution, but with the qualifications involved in that 9th of June letter. The Bank was, at that date, master of its resolution amended and free to retake it. The resolution, if to bind the Bank, required to be delivered to the grantee, Girard; but it has never been delivered with the mind to deliver, or with intent to bind the Bank, except upon condition performed, that Girard has never been willing to submit to. The Bank delivered it from Toronto to Laflamme, its counsel, but only as trustee for itself primarily, and not to be delivered by Laflamme but upon condition to be performed or submitted to Girard, who never got a delivery from the trustee but conditionally. This is proved by the trustee whose statement as to this is corroborated by Girard's exhibit No. 4, so long suppressed, as it were, by Girard, who, since his possession of it, has only sprung it upon Laflamme at his examination, late, after making Laflamme first fall into some statements that look erroneous, but not material. That exhibit, No. 4, is a scrap of paper upon which is, in Laflamme's handwriting, a clause that Girard was told the Bank would insist upon. Girard was so informed, when last he saw Laflamme, upon which occasion he took away with him this clause, this exhibit, and the project of agreement, and also, through inattention of Laflamme, the amended resolution. Upon such a possession of the resolution, Girard cannot be allowed to build up right of action against the Bank. The treaty between Girard and the Bank has never been concluded. Girard cannot force the Bank to sign an *acte* omitting that clause, exhibit No. 4. Action dismissed.

Duhamel, Pagnuelo & Rainville for plaintiff.

R. & L. Laflamme for defendants.

CIRCUIT COURT.

MONTREAL, Dec. 1879.

BEAUDRY v. BISSONNETTE, and MOSS, intervenant.

Pledge—Pawnbroker entitled to amount of bonâ fide advance on article fraudulently pawned by an employee of the lawful holder.

One Jackson entrusted to Beaudry, watchmaker, a watch, worth $60, to be repaired. Beaudry handed it to Chevalier, a working watch-maker, who was in the habit of doing work for him at his (Chevalier's) house. Chevalier took the watch away from Beaudry's shop, and pawned it with Moss, receiving a loan of $23 upon it. Moss, under orders from the Police Magistrate, delivered the watch to Bissonnette, High Constable for the District of Montreal. Beaudry then caused the watch to be seized, by *saisie-revendication*, in the High Constable's hands. Moss intervened, claiming to be paid his advance of $23, before the surrender of the watch.

RAINVILLE, J., said that the facts in the case being admitted, the only question was one of law: who should bear the loss of the $23, Moss or Beaudry? Chevalier's conduct did not amount to theft, but was merely an *abus de con-*

fiance; and Beaudry, who reposed confidence in a faithless employee, should bear the loss rather than Moss, who advanced to one having the watch—so far as Moss was concerned—*à titre de propriétaire*, under art. 2268 C. C. Intervention maintained, with costs as in an intervention in a case of $23.

Duhamel, Pagnuelo & Rainville, for plaintiff.

Kerr, Carter & McGibbon, for intervenant.

FULLER V. SMITH.

To the Editor of the LEGAL NEWS.

SIR,—We see, on page 388 of your last number, two cases significantly reported in juxtaposition, as contributions from Messrs. Brooks, Camirand & Hurd, and being interested in one of them, now in appeal, as counsel, as well as in justice to the learned judge who rendered these judgments, which, *as reported*, are contradictory, we ask space for a word.

The first judgment was rendered in March last, and the second in November following, and we can account for their now appearing together in your valuable publication, only upon the supposition that the learned contributors prepared both within the twenty-four hours allowed to the disappointed pleader, after the rendering of the second judgment against them. The first was in their favor.

It will be observed that the reports in question are not even skeletons of what a report ought to be, and, as a matter of fact, they give no correct idea of the grounds of either case.

Not a word is said about the pleadings or proof, which essentially vary in the two cases.

In the case of *McLaren* v. *Drew*, and *Drew*, opp., the first case decided, and where the opposition was dismissed, the contestation of the opposition was filed on 24th Sept., 1878, six months after the first seizure, on which the opposition was based, had been quashed and declared a nullity *ab initio*. The contestation in this case, moreover, was specially based on the ground that the first seizure was a nullity and had always been a nullity, and in evidence of this it referred to the judgment rendered months before, declaring the said first seizure a nullity, and that consequently the first seizure did not *subsist* when the second seizure was made. It may be added that this contestation is drafted by Mr. Camirand, of the firm of Brooks, Camirand & Hurd, who is also the plaintiff in the case of *Camirand* v. *Drew*, wherein the first seizure was made, and consequently he had every facility for knowing that the first seizure was null and void.

Now, in the second case reported, *Fuller* v. *Smith*, and *Fletcher*, opp., the first seizure is not even opposed, the opposition thereto merely asking that *the sale* be suspended until certain movable property, then also under seizure, should be sold. That is, in the one case, not only was the first seizure attacked and denied, but it had been adjudged null and void months before the contestation in question, while in the other case, it is specially admitted that the first seizure was subsisting when the second was made, and is still subsisting.

Where, then, Mr. Editor, we may ask, are the grounds for placing these two judgments so unfairly and suggestively side by side? Where, in reality, is the contradiction studied to give them?

We never doubted the propriety of the time-honored "twenty-four hours," but it has commonly been allotted to the unsuccessful suitor, and not to the attorney. As to the motive, however, prompting these contributions, we are willing to leave this an open question, but as cognizant of the facts, we deemed it our duty by stating these facts, to remove the reflection, unintentionally, we hope, cast upon the judge of rendering two judgments, reported on the same page of your journal, one directly contradictory of the other.

We are,

Yours obediently,

IVES, BROWN & MERRY.

SHERBROOKE, Dec. 5, 1879.

CURRENT EVENTS.

THE Q. C. QUESTION—In the Practice Court, Montreal, on the 5th inst., Mr. Justice Mackay intimated to the bar that they would do well to respect the opinion expressed by the Supreme Court in the case of *Lenoir & Ritchie*, and that he was not disposed to recognize as Queen's Counsel those who hold documents emanating from the Lieutenant-Governor.