The Legal News.

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PROPOSED LAW SOCIETY.

At a preliminary meeting held in Montreal on the 11th instant, which was attended by a fair representation of the members of the bar, Mr. W. H. Kerr, Q.C., in the chair, the question of organizing a Law Society was considered, and appeared to meet with general approval. A committee was named to consider the details of the scheme, and to arrange for a general meeting of the bar on the 19th instant.

It would be premature, at the time we write, to discuss a proposal which has not taken definite form. It may be remarked, however, that the suggestion is one which has been made more than once during the last twenty years. It was expressly made in writing, nearly sixteen years ago, by Mr. G. W. Stephens, a prominent citizen, then a young practising member of the bar. His letter on the subject, addressed to the editor of the Lower Canada *Law Journal*, will be found at page 11 of the first volume of that publication.

No doubt excellent results might be expected from such an association. We assume, of course, that it would be co-extensive with the order of the bar itself. It is an elementary principle in mechanics, that the weight of the whole compound is equal to the sum of the weights of the separate elements, and if the influence of the bar organization as a whole is not what might be desired, it could hardly be expected that a section or fragment of it would, as such, exert any greater influence.

PUBLIC LIBRARIES.

The Bench of Massachusetts, it appears, has recently lost an affluent and public-spirited member; for we are told that Judge Forbes, late of the Supreme Court, has bequeathed to Northampton the sum of $200,000 for the establishment of a public library. The learned Judge does not seem to have been gifted with the prophetic vision which is sometimes popularly attributed to the dying; for he has annexed to his gift the illiberal condition that no minister of religion shall have anything to do with the management of the institution. If the condition be not complied with, the money is to go to Harvard College. This is not quite so bad as the late Mr. Girard, who willed that no minister of religion should cross the threshold of the buildings which were to be erected by the aid of his munificent bequest; but it indicates either that Judge Forbes was not altogether free from bigotry, or that his experience of the clergy was singularly unfortunate.

Public libraries, however, with or without whimsical, bigoted, or fanatical conditions, are sadly needed. It is much to be regretted that the Fraser bequest, though not hampered by any offensive clause, has thus far failed in its purpose to establish one in Montreal. We doubt whether there is any city of the same size and wealth in the United States so destitute in this respect. It remains for some one to claim the honorable distinction of being the first to endow the chief city of the Dominion with this noble gift.

SUPREME COURT BUSINESS.

We are able to publish in this issue a large number of the recent decisions of the Supreme Court. It is evident that no well-founded complaint exists on the score of promptitude in the dispatch of business. The Court seems to be keeping fairly up to the work devolving upon it. For example, in two cases decided in Montreal during the last December term of the Court of Appeal—*Shaw & Mackenzie*, and *Abrahams v. Regina*—judgment has already been rendered by the Supreme Court. This is certainly expedition enough for all practical purposes, and outdoes the majority of Supreme Courts the world over. It is well that it should be so, because it is probable there will soon be a great increase in the volume of business before the Court, and it is desirable that no ground should be lost while the tribunal is yet in its infancy and has not too much to do.

NOTES OF CASES.

SUPREME COURT OF CANADA.*

OTTAWA, March 3, 1881.

SHAW, Appellant, v. MACKENZIE et al., Respdts.

Capias—Damages—Want of probable and reasonable cause—Art. 798 C.P.C.

This was an appeal from a judgment of the Court of Queen's Bench for the Province of

*Notes by Geo. Duval, Esq., in advance of the regular reports.

Quebec, Nov. 12, 1880, (See 3 Legal News, p. 369), affirming the judgment of the Superior Court, (See 2 Legal News, p. 5), by which the plaintiff's action was dismissed.

The plaintiff (present appellant) claimed damages from the respondent for the malicious issue and execution of a capias against him, the plaintiff, at Montreal, in July, 1878.

The defendants, on appeal, relied on a plea of justification, alleging that when they arrested the appellant, they acted with reasonable and probable cause. In his affidavit, the reasons given by the deponent Kenneth Mackenzie, one of the defendants, for his belief that the appellant was about to leave the Province of Canada were as follows: "That Mr. Powis, the "deponent's partner, was informed last night in "Toronto by one Howard, a broker, that the said "W. J. Shaw was leaving immediately the Do-"minion of Canada, to cross over the sea for "Europe or parts unknown, and deponent was "himself informed, this day, by James Reid, "broker, of the said W. J. Shaw's departure for "Europe and other places." The appellant Shaw was carrying on business as wholesale grocer at Toronto, and was leaving with his son for the Paris Exhibition, and there was evidence that he was in the habit of crossing almost every year, and that his banker and all his business friends knew he was only leaving for a trip; and there was no evidence that the deponent had been informed that appellant was leaving *with intent to defraud*. There was also evidence given by Mackenzie, that after the issue of the capias, but before its execution, the deponent asked plaintiff for the payment of what was due to him, and that plaintiff answered him "that he (Shaw) would not pay him, that he might get his money the best way he could."

Held, on appeal, that the affidavit was defective; the fact of a debtor, about to depart for England, refusing to make a settlement of an overdue debt, is not sufficient reasonable and probable cause for believing that the debtor is leaving *with intent to defraud his creditors*. Art. 798 C.P.C. Judgment reversed; $500 damages awarded.

Appeal allowed.

Maclaren, and *Rose*, for Appellant.

Doutre, Q.C., for Respondents.

ABRAHAMS, Appellant, v. THE QUEEN, Respondent.

Indictment—Delegation of authority by Attorney General—32 & 33 Vic. cap. 29, sec. 28.—Obtaining money by false pretences.

This was an appeal from a judgment of the Court of Queen's Bench, Montreal, (see 4 Legal News, p. 41; 24 L.C.J., p. 325).

The indictment contained four counts for obtaining money by false pretences.

On the indictment was endorsed: "I direct "that this indictment be laid before the Grand "Jury.

Montreal, 6th October, 1880.

L. O. LORANGER,
Atty. General.

"By J. A. Mousseau, Q. C.
" C. P. Davidson, Q. C."

Defendant moved to quash the indictment. The motion was supported by affidavit, and the learned Chief Justice rejected it, intimating at the time that as he had some doubts, he would reserve the case, should the defendant be convicted. The defendant was found guilty, and the following questions *inter alia* were submitted for the consideration of the Court of Queen's Bench:

1. Whether the Attorney General could delegate his authority, to direct that the indictment in this case be laid before the Grand Jury, and whether the direction as given on the indictment, was sufficient to authorise the Grand Jury to enquire into the charges and report a true Bill.

2. Whether if the indictment was improperly laid before the Grand Jury it should have been quashed on the motion made by the defendant?

It was admitted that the Attorney General gave no direction with reference to this indictment, and that the gentlemen who put the endorsement on the indictment, did so merely because they were representing the Crown at the current term of the Queen's Bench under a general authority to conduct the Crown business at such term, but without any special authority over, or any directions from the Attorney General in reference to this particular indictment.

Held, on appeal, that under 32 and 33 Vic., c. 29, sec. 28, the Attorney General has no authority to delegate to the judgment and discre-

tion of another the power which the Legislature has authorized him personally to exercise; that no power of substitution had been conferred, and therefore the indictment was improperly laid before the Grand Jury.

Appeal allowed.

J. Doutre, Q. C., for Appellant.

C. P. Davidson, Q. C., for Respondent.

OTTAWA, February, 1881.

GINGRAS, Appellant, v. DESILETS et al., Respondents.

Damages—Judgment of the Court of first instance.

This was an action brought by appellant against the late P. O. Desilets, the original defendant in the cause, claiming a sum of $4,000 damages: 1st. by injurious words, threats and false arrest; 2nd. by violence and wounds causing the appellant to have one of his fingers amputated, as well as a long and excessively painful disease, to wit: the lock-jaw, which put him for a long time in imminent danger of death, and left him crippled and with his general health gravely affected for the future.

The defendant appeared by his attorney, but did not file any plea. After taking the evidence, the Superior Court at Three Rivers, condemned the respondents, (the present cause having been continued against them by *reprise d'instance*, as heirs and testamentary executors of the said P. O. Desilets), to pay to the appellant the sum of $3,000 damages.

On appeal to the Court of Queen's Bench, the judgment of the Superior Court was reduced to $600, the amount allowed to the appellant, and he was condemned to pay all the costs of appeal.

Held, that inasmuch as the damages awarded were not of such an excessive character as to show that the Judge who tried the case had been either influenced by improper motives or led into error, the amount so awarded by him ought not to have been reduced. [Taschereau, J., dissenting.]

Appeal allowed with costs.

O'Gara, Q.C., & Hould, for Appellant.

Angers, Q.C., for Respondents.

LEVI, Appellant, v. REED, Respondent.

Jurisdiction—Right of appeal by plaintiff, respondent in Court of Queen's Bench—Slander—Verdict of Judge.

The present appellant had sued the respondent before the Superior Court at Arthabaska, in an action of $10,000 damages for verbal slander. The judgment of the Superior Court awarded to the appellant a sum of $1,000 for special and vindictive damages.

By the judgment of the Court of Queen's Bench, the amount awarded was reduced to $500, and costs of appeal were against the present appellant.

Held, on appeal, 1. That the plaintiff, although respondent in the Court of Queen's Bench, was entitled to appeal, as in determining *the amount of the matter in controversy* between the parties, the proper course was to look at the amount for which the declaration concludes, and not at the amount of the judgment. *Joyce* v. *Hart*, 1 Can. S. C. R. 321, reviewed. [Taschereau, J., dissenting.]

2. That, as in the case of *Gingras* v. *Desilets*, the amount of damages fixed by the judge who tried the case ought not to have been reduced.

Appeal allowed with costs.

Geo. Irvine, Q.C., and *Gibson*, for Appellant.

W. Laurier, Q.C., for Respondent.

DOMINION TELEGRAPH COMPANY, Appellant, v. GILCHRIST, Respondent.

Trespass—Right of Company to cut ornamental trees.

The servants of the Company, in erecting their line through Norton, King's County, cut down ornamental trees on Dr. Gilchrist's property, claiming the right to do so under their act of incorporation. In an action of trespass, tried at King's County, Dr. Gilchrist obtained a verdict for $235 damages, which was sustained by the Supreme Court of New Brunswick. The Company appealed on the following grounds: 1. That the practice of the Court not to allow the defendant to cross-examine a witness to prove his plea, as decided in *Atkinson* v. *Smith*, 4 Allen, 309, was erroneous; 2. That as the Company had the right to cut down ornamental or shade trees where necessary for the erection, use or safety of their line, they were the judges of that necessity; and 3. That the plaintiff's remedy was under the clause in the Company's Act referring to arbitration, and ousted the jurisdiction of the courts.

Held, overruling these objections, that the Company should be held to a strict construction of their act of incorporation, and were bound to prove that it was neces-

sary for the erection, use or safety of their line to cut these trees, and that having failed to do so, they were liable.

Appeal dismissed with costs.

Hector Cameron, Q. C., for Appellant.

C. W. Weldon, Q. C., and *Burbridge*, for Respondents.

SNOWBALL, Appellant, v. STEWART, Respondent.

Action to recover logs—Wilhdrawal of objectionable evidence from the Jury—Misdirection.

This was an action brought by Mr. Stewart against Mr. Snowball, to recover a quantity of logs alleged to have been cut by parties named Sutherland and Kirwan, on lands held by plaintiff under license from the Government. On the trial, the admissions of these parties were admitted on the plaintiff's counsel undertaking to connect the defendant with these parties. This he failed to do, but called an agent of the plaintiff, to depose as to certain statements of Mr. Snowball. The Chief Justice withdrew the evidence of these admissions from the Jury, and directed them that if they thought Snowball admitted he had the logs, the plaintiff was entitled to a verdict. The jury found a verdict for the plaintiff. A new trial was moved for on the grounds: 1. That the Chief Justice had no right to withdraw the objectionable evidence admitted by him, from the jury. 2. That outside of these statements there was no evidence, and the learned Judge misdirected the jury on that point.

The Supreme Court of New Brunswick discharged the rule, and on appeal to the Supreme Court of Canada, it was:

Held, that there was no evidence that the logs sought to be recovered had been cut on plaintiff's premises, and that while the Chief Justice had the right to withdraw the objectionable evidence from the jury, he had misdirected the jury as to the effect of the statements made by Snowball to plaintiff's agent.

Appeal allowed.

Weldon, Q. C., for Appellant.

Wetmore, Q. C., for Respondent.

TEMPLE, Appellant, v. CLOSE, Respondent.

Trover—Vendor and Purchaser—Property in goods.

This was an action of trover for bricks. The plaintiff agreed with one Thomas, a brick-maker, who had a kiln of bricks burnt, ready for use, containing somewhere in the vicinity of 100,000 bricks, to purchase, and paid for a portion of them, 50,000 according to sample. Thomas delivered to plaintiff 16,000, and the balance of the bricks was taken by the defendant, as Sheriff of York, under an execution against Thomas. The question to be decided on this appeal was, whether the bricks were the plaintiff's property, under what had taken place between Thomas and him, so as to exempt them from seizure under the execution.

Held, that there was no sale of a specific property under the contract, and that the property in the bricks did not pass to the purchaser until the bricks had been selected.

Appeal allowed with costs.

G. F. Gregory, for Appellant.

Wetmore, Q.C., for Respondent.

THE QUEEN, Appellant, v. BELLEAU et al., Respondents.

North Shore Quebec Turnpike Bonds issued under authority of 16 Vict. c. 235—Liability of Canada for the debts of the late Province of Canada.

The respondents, by Petition of Right before the Exchequer Court, set forth in substance: That the Province of Canada had raised, by way of loan, a sum of £30,000 for the improvement of Provincial highways situate on the North Shore of the river St. Lawrence, in the neighborhood of the City of Quebec, and a further sum of £40,000 for the improvement of like highways on the South shore of the river St. Lawrence; that there were issued debentures for both of the said loans, signed by the Quebec Turnpike Road Trustees, under the authority of an act of Parliament of the Province of Canada, 16 Vict. c. 235, intituled: "An Act to authorize the Trustees of the Quebec Turnpike Roads to issue debentures to a certain amount and to place certain roads under their control"; that the moneys so borrowed came into the hands of Her Majesty, and were expended in the improvement of the highways in the said Act mentioned; that no tolls or rates were ever imposed or levied on the persons passing over the roads improved by means of the said loan of £30,000; that the tolls imposed and collected on the highways improved by means of the said loan of £40,000

were never applied to the payment of the debentures issued for the last mentioned loan in interest or principal; that the Trustees accounted to Her Majesty, as well for the said loans as for the tolls collected by them; that at no time had there been a fund in the hands of the said Trustees adequate to the payment, in interest and principal, of the debentures issued for said loans; that the respondents are holders of debentures for both of the said loans to an amount of $70,072, upon which interest is due from the 1st July, 1872; that the debentures so held by them fell due after the Union, and that Her Majesty is liable for the same, under sect. 111 of the B.N.A. Act, 1867, as debts of the late Province of Canada existing at the Union.

In his defence to this Petition, Her Majesty's Attorney General did not deny the liability of Her Majesty for the debts of the late Province of Canada, but he denied that the debentures in question were debentures of the Province of Canada; that the moneys for which they were issued were borrowed and received by Her Majesty; that there was any undertaking or obligation on the Province of Canada to pay the whole or any part of the said debentures.

Held, affirming the judgment of the Exchequer Court, that the debentures in question were debentures of the late Province of Canada: therefore, under the provisions of the B. N. A. Act, the Dominion of Canada was liable, but for the capital only of the said debentures, it being provided by cap. 235, sec. 7, that no money should be advanced out of the Provincial funds for the payment of the interest. (Ritchie, C.J., and Gwynne, J., dissenting).

Lash, *Q.C.*, and *Church*, *Q.C.*, for Appellants.

McCarthy, *Q. C.*, and *Irvine*, *Q. C.*, for Respondents.

JONAS, Appellant, v. GILBERT, Respondent.

By-law—Power to impose License Tax—Discrimination between residents and non-residents—Ultra vires of 33 *Vict. c.* 4, (*N. B.*)

This was an action against the Police Magistrate of the City of St. John, for wrongfully causing the plaintiff (Jonas), a commercial traveller, to be arrested and imprisoned on a warrant issued on a conviction by the Police Magistrate, for violation of a by-law made by the Common Council of the city of St. John, under an alleged authority conferred on that body by 33 Vict. c. 4, passed by the Legislature of New-Brunswick. The by-law in question authorized "the mayor or his deputy, as aforesaid, to demand and receive from any and every such person to whom license shall be granted, as aforesaid, for the use of the Mayor, Aldermen and Commonalty of the said city, the sum of money hereinafter mentioned and specified, according to the following scale, namely:

Professional men, as barristers, attorneys, notaries, physicians, surgeons, practitioners in medicine or any art of healing, dentists, if resident, $20. If transient persons, not having taken up a residence, $40.

Wholesale or retail merchants or dealers or traders, forwarding or commission merchants, lumber merchants or dealers, the agents of merchants or traders, express agents, general brokers, manufacturers, apothecaries, chemists and druggists, if resident, $20. If transient persons, not having taken up a residence, $40.

Persons not having their principal place of business in this city, selling or offering for sale, goods, wares, and merchandise of any description by sample card, or any other specimen, and the agents of all such persons, $40.

Persons using any art, trade, mystery or occupation, or engaged in any profession, business or employment within the city, not coming under any of the before-mentioned, if resident, $20. If transient persons, not having taken up a residence, $40.

Held, that assuming the Act 33 Vict. c. 4, to be *intra vires* of the Legislature of New Brunswick, the by-law made under it was invalid, because the Act in question gave no power to the Common Council of St. John, of discrimination between residents and non-residents, such as they had exercised in this by-law.

Bethune, *Q. C.*, and *Maclaren*, for Appellants.

Tuck, *Q. C.*, for Respondent.

DEWE, Appellant, v. WATERBURY, Respondent.

Slander—Public Officer—Privileged Communication.

The appellant, Dewe, having been appointed Chief Post Office Inspector for Canada, was engaged under directions from the Postmaster General in making enquiries into certain irregularities which had been discovered at

the St. John Post Office. After making inquiries, he had a conversation with the respondent, Waterbury, alone in a room in the Post Office, charging him with abstracting missing letters, which respondent strongly denied. Thereupon the assistant-postmaster was called in, and the appellant said: "I have charged Mr. W. with abstracting the letters. I have charged Mr. W. with the abstractions that have occurred from those money letters, and I have concluded to suspend him." The respondent having brought an action for slander, was allowed to give evidence of the conversation between himself and appellant. There was no other evidence of malice. The jury found that appellant was not actuated by ill-feeling toward the respondent in making the observation to him, but found that he was so actuated in the communication he made to the assistant postmaster.

Leave being reserved to enter a non-suit or verdict for the defendant, the verdict was for the plaintiff, and the jury assessed the damages at $6,000.

Held, on appeal, that the appellant was in the due discharge of his duty and acting in accordance with his instructions, and that the words addressed to the assistant post-master were privileged.

Lash, Q. C., for Appellant.
Tuck, Q. C., for Respondent.

GALLAGHER, Appellant, v. TAYLOR, Respondent.

Marine Policy—Total loss—Sale by Master—Notice of Abandonment.

This was an action brought by the respondent against the appellant, to recover as for a total loss, the amount insured by the appellant, as one of the underwriters, upon a marine policy issued by the Ocean Marine Insurance Association of Halifax, upon the shallop "Susan," belonging to the respondent, alleged to have been totally lost by a peril insured against. The vessel stranded, on the 6th July, near Port George, in the county of Antigonish, adjoining the county of Guysboro', where the owner resided. The master employed surveyors, and on their recommendation, confirmed by the judgment of the master, she was advertised for sale on the 7th July, and sold on the 11th July. The captain had telegraphed to the agents of the vessel in Halifax, who informed defendant's company, but he did not give any notice of abandonment, and did not endeavor to get off the vessel.

The vessel, valued at $1,200, insured for $800, was sold for about $105 on the 11th July, and was immediately got off, and afterwards used in trading, and carrying passengers.

Held, that the sale by the master was not justifiable, and that the loss was not such a loss as to dispense with notice of abandonment in claiming for a total loss.

Rigby, Q.C., for Appellant.
Gormully and *Graham*, for Respondent.

CIMON, Appellant, v. PERRAULT, Respondent.

Election Act—Colorable employment by Agent—Acts of Sub-agent—Public Peace.

The charge upon which this appeal was decided was one of bribery by Allard and Tarte, agents of the respondent, Perrault, by payments of money to Bouchard, Boivin, I. Gagnon and J. Gagnon, all of whom were electors. It was proved that Tarte was the respondent's general agent for that part of the country, and that Allard was specially requested and given money by Tarte, and induced by him to advance money to employ a certain number of men, without specifying any particular persons to be so employed, for the alleged purpose of preserving the public peace on polling day. It was not in evidence that Tarte had applied to the proper authorities, or otherwise complied with the law in order to secure the peaceful conduct of the election, but the reason assigned by him for ordering the employment of policemen was that he had received information by telegrams and letters, that roughs were coming down from Quebec to Bay St. Paul to interfere with the voting of the electors. No person came, and the polling took place without any interference. The four persons above named were known to be supporters of the appellant, and swore that they voted for respondent because they had received from Allard the sum of $2 each.

Held (Taschereau and Gwynne, JJ., diss.) (1) that the respondent was responsible for the acts of bribery committed by Allard, a sub-agent appointed by his general agent. (2) That the employment of a number of men to act as policemen on polling day by direction

of Tarte, without his having previously taken the means provided by law to secure the public peace, was a colorable employment, and therefore respondent, through his agent, Tarte, was guilty of a corrupt practice.

Davidson, Q.C., for Appellant.

Angers, Q.C., & Pelletier, Q.C., for Respondent.

LARUE, Appellant, v. DESLAURIERS, Respondent.

Supreme Court Act, Sec. 4—Right to send back record for further adjudication—Corruption—Insufficiency of return of election expenses—Personal expenses of candidate to be included.

The original petition came before Mr. Justice McCord for trial, and was tried by him on the merits subject to an objection to his jurisdiction. The learned judge, having taken the case *en délibéré*, arrived at the conclusion that he had no jurisdiction, declared the objection to his jurisdiction well founded, and "in consequence the objection was maintained, and the petition of the petitioner was rejected and dismissed."

This judgment was appealed from, and the now respondent, under sec. 48 of the Supreme Court Act, limited his appeal to the question of jurisdiction, and the Supreme Court allowed the appeal.

Held, that Mr. Justice McCord had jurisdiction, and it was ordered that the record be transmitted to the proper officer of the lower Court, to have the said cause proceeded with according to law.

Held, that the Court could not, even if the appeal had not been limited to the question of jurisdiction, have given a decision on the merits, and that the order of this Court remitting the record to the proper officer of the Court *a quo* to be proceeded with according to law, gave jurisdiction to Mr. Justice McCord to proceed with the case on the merits, and to pronounce a judgment on such merits, which latter judgment would only be properly appealable under sec. 48, Supreme Court Act, (Fournier and Henry, JJ., dissenting.)

The charge upon which this appeal was principally decided was that of the respondent's bribery of one David Apelin. During the election canvass, the respondent gave Apelin, at whose house he stopped two or three times, $5 for the trouble he gave him. Apelin swore it was not worth more than $1. This amount, together with other amounts paid out by the appellant during the election canvass, was not furnished to his agent as part of his personal expenses, and did not appear in the official statement of the legal expenses of the appellant furnished to the returning officer.

Held, that the candidate is bound to include in the published statement of his election expenses his personal expenses, and as appellant had not included in the said return the said amount of $5, and Apelin had not earned more than $1, the payment to Apelin by respondent of $4 more than was due, was an act of personal bribery.

The judgment of McCord, J, (6 Q. L R. p. 100) on the other charges was also affirmed.

Langelier, Q. C., for Appellant.

Amyot, for Respondent.

MCGREEVY, Appellant, v. PAILLE, Respondent.

Answers to Interrogatories—C. C. P. 228, 229.

The Superior Court at Three Rivers, by its judgment, which was confirmed by the judgment of the Court of Queen's Bench, condemned the appellant McGreevy to pay to the respondent the sum of $3,090.89, for the balance due on the price and value of railway ties made and delivered to the appellant, in accordance with a contract signed by his brother R. McGreevy, and the respondent Paille. In answer to certain interrogatories which referred to all the matters in issue between the parties, the appellant answered, either, "I do not know," or, "I have no personal knowledge."

Held, that such answers are not categorical, explicit and precise, as required by arts. 228 and 229, C. P. C., and that the facts mentioned in these interrogatories must be taken as *pro confessis*, and sufficiently proved the plaintiff's case.

Irvine, Q.C., for Appellant.

Hould, for Respondent.

RYAN, Appellant, v. RYAN, Respondent.

Statute of Limitations—Possession as caretaker—Tenancy at will—Finding of the Judge at the trial.

The plaintiff's father, who lived in the township of Tecumseh, owned a block of 400 acres of land, consisting respectively of lots 1 in the 13th and 14th concessions of the township of

Wellesley. The father had allowed the plaintiff to occupy 100 acres of the 400 acres, and he was to look after the whole and to pay the taxes upon them, but to take what timber he required for his own use, or to help him to pay the taxes, but not to give any timber to any one else or allow any one else to take it. He settled in 1849 upon the south half of lot 1 in the 13th concession. Having got a deed for the same in November, 1864, he sold the 600 acres to one M. K. In December following he moved on the north half of this lot No. 1, and he remained there ever since. The father died in January, 1877, devising the north half of the north half, the land in dispute, to the defendant, and the south half of the north half to the plaintiff. The defendant, claiming the north 50 acres of the lot by the father's will, entered upon it, whereupon the plaintiff brought trespass, claiming title thereto by possession.

The learned Judge at the trial found that the plaintiff entered into possession and so continued, merely as his father's caretaker and agent, and he entered a verdict for the defendant. The evidence showed an entry on the land within the last seven years, and thereby created a new starting point for the Statute, and a new tenancy at will.

Held, that the evidence shows that the respondent at first entered and continued in possession of the land in dispute as agent or caretaker for his father; and he subsequently acknowledged himself to be and agreed to be tenant at will to his father, within ten years; and therefore respondent had not required a statutory title.

Appeal allowed.

King, for Appellant.
Bowlby, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 15, 1881.

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

FULLER et al. (plffs. contesting opp. below), Appellants, & FLETCHER, (oppt. below), Respondent.

Execution—Second seizure of lands after the Sheriff has returned the first writ and procès-verbal of seizure.

This was an appeal from a judgment of the Superior Court at Sherbrooke (Doherty, J.), Nov. 10, 1879, maintaining an opposition. (See 2 Legal News, p. 388.)

The Sheriff for the District of St. Francis, on the 29th of March, 1878, seized the lands of S. E. Smith, at the suit of the respondent.

On the 21st July following Smith made an opposition to annul the seizure. The sale of the lands seized was suspended by this opposition, which was returned into the Prothonotary's office by the Sheriff on the 13th August, 1878, together with the writ under which the seizure had been made.

On the 29th March, 1879, the Sheriff seized, under a writ of execution issued by the appellants, the same lands previously seized at the instance of the respondent.

On this second seizure the respondent made an opposition to annul the sale, on the ground that the first seizure was still pending, and that a second seizure could not take place of the same lands until the first had been disposed of.

The appeal was from the judgment maintaining this opposition, and declaring the second seizure void.

The COURT, (per DORION, C.J.,) held that, under art. 642 C. C. P., the existence of a first seizure can prevent a second seizure only when the writ on which the first seizure has been made is still in the hands of the Sheriff. It is not possible for the Sheriff, after he has dispossessed himself of the first writ and *procès-verbal* of seizure, to note thereon, as an opposition for payment, any subsequent writ that he may receive. The provisions of C. C. P. 642, 643, suppose that subsequent writs of execution are placed in the hands of the Sheriff before the proceedings on the first seizure have been abandoned or suspended, and while the Sheriff is still in time to proceed to the sale on the advertisements made on the first seizure, and on the day fixed for the sale. Here, the second writ being placed in the hands of the Sheriff long after the day fixed for the sale, and the suspension of the whole proceedings by the return of the first writ, the appellants had no means of compelling the Sheriff to advertise the sale of defendant's lands on the first seizure, nor to fix a day for the sale, except as directed by the second writ.

Judgment reversed.

Brooks, Camirand & Hurd, for Appellant.
Ives, Brown & Merry, for Respondents.