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JUDICIAL PRECEDENCE.

In a despatch from Sir M. E. Hicks Beach to the Governor General, of date 3rd November, 1879, the suggestion of the Canadian Government respecting precedence of the Judges of the Supreme and other Courts, is adopted. The following is the despatch :

"My Lord,—

"I have received your despatches Nos. 152 and 153 of the 26th May last, transmitting Reports of the Privy Council expressing the views of your Government respecting the question of precedence of Naval Officers in the Dominion, and on the subject of Salutes, and of the precedence to be given to the Lieutenant Governors of the Provinces within their respective Provinces, and at the seat of Government of the Dominion.

"I have transmitted copies of these Reports to the Lords Commissioners of the Admiralty and I am still in communication with their Lordships on the subject of them, but I will not any longer delay conveying to you my approval of the suggestion made by your Government, that the Chief Judges of the several Superior Courts of Common Law and Equity in the different Provinces of the Dominion, should take rank and precedence (in accordance with the dates of their respective Commissions) immediately after the Chief Justice of the Supreme Court of Canada, and that the Puisne Judges of the Supreme Court should take rank and precedence (in accordance with the dates of their respective commissions) immediately before the Puisne Judges of the several Provincial Courts, in lieu of the rank and precedence assigned to the Judges of the Supreme Court by my despatch of the 31st October, 1878."

DELAY FOR FILING PLEAS.

A singular exception to the general rule governing delays is to be found in Art. 137 of the Code of Procedure. Art. 24 says that delays continue to run upon Sundays and holidays, and under this, it has been held that a notice of motion may be served on Saturday for the Monday following, notwithstanding the rule of practice which existed before the introduction of the Code. The same rule applies to other delays, but in Art. 137 an exception is established with reference to the three days allowed to file pleas after demand. The French version says, "si le plaidoyer n'est pas produit "*avant l'expiration du troisième jour juridique*," the prothonotary may grant the plaintiff a certificate of foreclosure. The English version is still more positive : "If the pleas are not filed "within the three next following juridical "days," &c., showing that the foreclosure cannot be granted until three juridical days have elapsed. In the Consol. Stat. L. C., cap. 83, s. 13, the English text is "third juridical day" like the French.

It is difficult to assign any satisfactory reason for this exception, which, nevertheless, seems to be clearly established. The pleas, it is true, are an important step in the case, but the defendant knows from the time he appears that the pleas are to be prepared, and if the time be found too short, it may be extended on application to the Court. In Art. 1070, applying to the Circuit Court, the delay is three days, not three juridical days. The Codifiers, therefore, appear to have retained the old rule, in the second paragraph of Art. 137, without remarking its exceptional nature.

The point, it may be observed, came under the notice of the Superior Court, Jetté, J., in the case of *Burroughs* v. *Berthelot*, on the 30th December last. The Court in that case set aside as premature the foreclosure which had been granted before the expiration of three juridical days, but no costs were allowed.

THE Q. C. APPOINTMENTS.

A prolix discussion has been going on in the Toronto papers with reference to the precise effect of the judgment of the Supreme Court in the Ritchie case. It is contended that the decision does not interfere with the right of Provincial Governments, under the authority of local legislative acts, to confer on counsel the title of Q. C., valid within the limits of the Province, and that such local Queen's Counsel may even be accorded precedence in local

Courts over Dominion Queen's Counsel. This may be true, but whether it be true or not, it does not seem to be a matter of great importance. It is difficult to appreciate the value of a title which must be abandoned the moment the dignitary gets beyond the limits of the Province in which it was conferred. A local Q. C. going from Montreal to Ottawa, to plead a case in the Supreme Court, would find himself divested of his rank at the end of his journey. Nay more, inasmuch as provincial Courts are Dominion Courts for insolvency and election matters, the conflicting claims to precedence would be confusing indeed. The creation of a new and purely local dignity under the old name is to be deprecated. Some eminent members of the Ontario bench and bar seem to be of this way of thinking, for we observe that Mr. Bethune, a leading counsel who was a Q. C. of Ontario, formally abandoned his pretensions to the rank, not only before the Supreme Court, but before the Court of Common Pleas at Toronto, and his course received the approval of the Chief Justice and other members of the Court.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, Oct. 31, 1879.

MACKAY, RAINVILLE, PAPINEAU, JJ.

LOGAN v. KEARNEY et al., and KEARNEY, petitioner.

[From S. C., Montreal.

Insolvent Act—Abuse of process—Attachment by prête-nom at the instance of an official assignee.

MACKAY, J. This is an appeal by a man who has had a writ of attachment in insolvency taken against him at the instance of one Bain, official assignee. Kearney petitioned in the Court for insolvency matters to have the attachment quashed, but was unsuccessful. He is at present in the Penitentiary, but though this be so, he is as much entitled to protection against undue law processes taken against him as is anybody else. Logan is a bailiff; petitioner never owed him a cent, and had been in the Penitentiary for some time before the idea occurred to Logan to work any bankruptcy process against him, nor did the idea, from anything that I see, occur to Logan's principal; for it appears that in reality this process was procured to be commenced in Logan's name by Bain, an official assignee, for whom it turns out that Logan is *prête-nom* of a bad kind. Logan swore to the affidavit for attachment, though, while swearing, he was not a *bona fide* creditor of the petitioner; according to my idea of what the word creditor means. Logan had lost nothing by him, never loaned to him, never sold to him, never bought from him.

The writ issued in Logan's name, addressed to Bain.

The real mover in the matter was and is Bain, official assignee, seeking practice, apparently; (*Query*, whether the bankruptcy system was introduced for the benefit of persons acting as he is doing?). The whole proceeding looks like a fraud upon the Bankruptcy Court. Persons using the bankruptcy process ought to have grievances. An hour before the transfer to Bain, he had no grievance—no claim whatever—against the petitioner. Bain contrives one; but he himself keeps back, using Logan for his purposes; and even now Bain has really only $30 of interest, under a transfer to Logan from Mr. Pagnuelo, of costs, alleged to be due him by Kearney and his partner. Logan, examined as a witness on the petition to quash the attachment, says he did not pay the $30 personally, nor did he see it paid. (Here the learned Judge read from the deposition of Logan, showing that Logan's name was simply used for the purposes of Bain, without Logan ever having been a creditor in any way of the man whom he appeared to be putting into insolvency.) The Court cannot approve of such courses as Bain's and Logan's. The Bankruptcy Court is to help aggrieved creditors, but not so much so those who invent *créances* late, or create grievances, so called, towards oppressing their neighbors. For myself, I was disposed to quash the attachment, seeing the facts before referred to proved; but the petitioner's case is strong on other grounds. There is no debt claim proved. In their hurry Bain and Logan omitted essential evidence, or proofs. No proof is made that Mr. Pagnuelo, whose (alleged) rights Bain founds upon, ever had a claim to transfer. Nothing shows it. No copy of judgment is filed. So the Court unanimously, for

this reason, maintains Kearney's petition with costs against Logan here, and in the Bankruptcy Court.

J. M. Glass for plaintiff.

P. J. Coyle for defendant, petitioner.

SUPERIOR COURT.

MONTREAL, Nov. 7, 1879.

WATSON v. THOMPSON.

Master and Servant—Negligence—Condonation by employer.

MACKAY, J. This was an action for $245 wages from 20th September, 1878, to 10th January, 1879. Up to 1st March, 1871, the plaintiff was in Thompson's service under one agreement, and has been since under a new one at $800 a year, payable weekly, from that time till 10th January, 1879. The pleas are that defendant discharged plaintiff on the 10th January, 1879; plaintiff's duty was to receive money and pay defendant's employees; that an iron safe, and burglar lock was furnished plaintiff; that on the 19th or 20th of April, 1877, the plaintiff received of defendant's money, $545, $510 of which were in plaintiff's hands. By plaintiff's imprudence this was lost or stolen; that defendant has been damaged, and the plaintiff must indemnify him; that the demand of plaintiff is more than extinguished by compensation to defendant, the amount that ought to be allowed defendant more than perfectly paying plaintiff, in fact, leaving plaintiff (after the compensation even) largely debtor to defendant. The third plea invokes an entry made in the books by plaintiff of 21st April of the larceny, and profit and loss is charged with it, without defendant's knowledge, &c. The last plea of defendant is that plaintiff's services were of no value to defendant, but in fact damaging to him in a sum exceeding $1,000. The plaintiff's answers to the pleas are that in April, 1877, the defendant had stolen from him from his safe the money referred to, but plaintiff was not, responsible; that defendant knew him not to have been blameable, and therefore did not attribute the theft and loss to any fault of his, but continued to pay him his wages as usual; and that plaintiff, in fact, till he left defendant's service, had his authority to sign for him all kinds of commercial paper, &c.

There is no debate about the fact of defendant having had stolen from him the $510. The loss occurred on a Saturday. Three gentlemen entered Thompson's shop. One of them drew off Thompson, another drew off Watson; the third took Watson's tin box out of the safe, containing defendant's $510. The loss having occurred, is it seen that plaintiff is blameable for it, and was in culpable negligence? There are appearances against plaintiff; yet looking at all the circumstances surrounding and following upon the event, he seems to have something to say against defendant, now charging him with the loss and damages resulting from that larceny. From April, 1877, date of the larceny, the plaintiff and defendant have been on their usual terms with one another till January, 1879. In April, 1877, the amount stolen was entered in the defendant's books to debit of profit and loss. Defendant in his evidence would have it that he did not know of this, yet he admits knowledge of an entry to like effect in the men's time book. Notwithstanding the larceny, the defendant paid plaintiff his wages, as if no larceny had been, save only that a balance was unpaid at 10th January, 1879. Condonation often takes place of *quasi délits; remise* it is called in French; it may be express, or implied. Has there been *remise* here by defendant? The defendant's own evidence goes to support the affirmative; for he says he had no intention to charge the plaintiff. We see then his intention, and plaintiff's entries in defendant's books, one of them at any rate known to defendant, by which plaintiff in a way accepts defendant's benevolence. In all 1877 and 1878 the defendant's conduct implied that he did not blame plaintiff. Culpable negligence is more a question of fact than of law. If plaintiff was guilty of it, would defendant have made the *remise* to him (even in intention) that he appears to have made? Under the circumstances I find against culpable negligence, and that defendant is too late now in charging plaintiff with it, and judgment must be for plaintiff.

Hutchinson & Co. for plaintiff.

F. W. Terrill for defendant.

SUPERIOR COURT.

SHERBROOKE, March 31, 1879.

DOHERTY, J.

*McLAREN v. DREW, and DREW, opposant.

Second seizure of lands while opposition to first seizure is being contested.

On the 25th February, 1878, the Sheriff, under a writ *de terris*, issued in this cause, made a seizure of certain lands of the defendant to satisfy plaintiff's judgment, and the sale was advertised for the following July.

The defendant opposed the sale on the ground alleged, and subsequently proved, that the same lands were then under seizure by the said Sheriff in a case of *Camirand* v. *Drew*, which seizure was opposed by the defendant, and the sale thereunder suspended during the trial of the opposition.

The writ of execution in the case of *Camirand* v. *Drew* had been returned by the Sheriff into Court, prior to the second writ coming into his hands, together with the opposition which was still before the Court, yet undecided.

The opposant pretends that by virtue of Articles 642 and 643 of the Code of Civil Procedure, the seizure of these lands in the case of *Camirand* v. *Drew* still *subsists*, and that therefore the Sheriff had no right to seize the same lands under a second writ, but should have noted such second writ as an opposition for payment.

This pretention is unfounded. The Articles of the Code cited by opposant apply only to cases where the first writ remains in the hands of the Sheriff. After the writ is returned by him into Court with an opposition which, perhaps, is being stoutly contested in the different Courts, how can the Sheriff note as an opposition any second writ placed in his hands? He no longer holds the first writ; it would not only be inconvenient, but impossible for him to note it; and it would be manifestly unfair to compel other creditors to wait about collecting their debts until the opposition to the first seizure should be determined.

This opposition is, therefore, dismissed with costs.

Brooks, Camirand & Hurd, for plff. contesting.
Calder & Hodge, for opposant.

* This and the following case of *Fuller* v. *Smith*, are contributed by Messrs. Brooks, Camirand & Hurd.

SHERBROOKE, Nov. 10, 1879.

DOHERTY, J.

FULLER et al. v. SMITH, and FLETCHER, opposant.

Second seizure of lands while opposition to first seizure is being contested.

On the 17th April, 1879, the Sheriff under a writ *de terris*, issued in this cause, made a seizure of certain lands of the defendant to satisfy plaintiff's judgment, which was on a mortgage debt, for a large amount, with several years' interest in arrears.

Fletcher, a third party, and also a creditor of defendant, opposed the sale, on the ground that in May, 1878, one year previous, the Sheriff seized the same lands by virtue of a writ *de terris* issued in a case of his, Fletcher's, against defendant, and had advertised the sale thereunder for the 12th September, 1878; that this sale was stayed by an opposition *afin d'annuler*, made by defendant, which opposition, being contested, was still pending before the Court. The first writ *de terris* had been returned into Court by the Sheriff with the opposition, before the writ in the present cause was placed in his hands.

The opposant, Fletcher, relied on Articles 642 and 643 of the Code of Civil Procedure, claiming that the seizure in the case of *Fletcher* v. *Smith* still subsisted, and that the Sheriff had no right to seize the same lands under the second writ, but should have noted such writ as an opposition for payment.

This pretention of opposant is well founded. The Sheriff had no right to make a second seizure of the same lands while the first seizure subsisted. It made no difference whether the opposition to the first seizure was then pending in the Court here, or had been carried to appeal, or even to the Privy Council, with the whole record, the seizure still subsisted all the same, and the Sheriff's duty was to note any second writ placed in his hands as an opposition for payment.

The law did not require him actually to note it *upon* the first writ, but *to the writ*.

The opposition is therefore maintained with costs.

Brooks, Camirand & Hurd, for plffs. contesting.
Ives, Brown & Merry, for opposant.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 20, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER, & CROSS, JJ.

MECHANICS BANK (pltf. below), appellant, and BRAMLEY and THE SINCENNES-MCNAUGHTON LINE (defts. below), respondents.

THE SINCENNES-MCNAUGHTON LINE (defts. *en garantie* below), appellants, and BRAMLEY, (plff. *en garantie* below), respondent.

Promissory Note — Indorsement — Principal and Agent—Note of a Company given by the Vice-President for his own debt with knowledge of creditor.

These two appeals arose out of the same transaction.

The action was brought by the Mechanics Bank against G. H. Bramley and the Sincennes-McNaughton Line, on two notes made by G. H. Bramley, payable to the order of the Sincennes-McNaughton Line. The notes were as follows:—

"$4,250. MONTREAL, 22nd Feb., 1875.

"Three months after date, I promise to pay to the order of the Sincennes-McNaughton Line, at the Mechanics Bank, here, Forty-two Hundred and Fifty Dollars, for value received.

(Signed,) G. H. BRAMLEY,

(Endorsed,) THE SINCENNES-MCNAUGHTON LINE, Per W. MCNAUGHTON.

Without recourse, W. MCNAUGHTON."

"$4,250. MONTREAL, 25th May, 1875.

"Three months after date, I promise to pay to the Sincennes-McNaughton Line, or order, at the office of the Mechanics Bank, here, Forty-two Hundred and Fifty Dollars, for value received.

(Signed,) G. H. BRAMLEY.

(Endorsed,) THE SINCENNES-MCNAUGHTON LINE. W. MCNAUGHTON."

Both the defendants, Bramley and The Sincennes-McNaughton Line, pleaded to the action.

The Sincennes-McNaughton Line pleaded that they constituted a corporation, and under their by-laws promissory notes, to be binding, should be signed by the President and Vice-President, and countersigned by the treasurer; that the Company had no dealings with the Bank, and had no knowledge of its endorsation; that the notes were given without any consideration to the Company, by Wm. McNaughton, to secure his private debt to the Bank, and that this was done with the knowledge of the Bank.

Bramley summoned the Sincennes-McNaughton Line *en garantie*, alleging that he had signed the notes for their accommodation. They did not plead to this demand *en garantie*.

The Superior Court, Torrance, J., dismissed the principal action, but maintained the demand *en garantie*.

The judgment was as follows:—

"The Court, etc....

"Adjudging first on the principal demand: Considering that it is proved that the plaintiffs received the notes sought to be recovered by this action from William McNaughton as security for the payment of a debt due by McNaughton to them, and the said notes were not duly endorsed to them by the defendants, The Sincennes-McNaughton Line; Doth maintain the pleas of the said defendants and dismiss plaintiffs' action with costs *distraits*, etc.

"And seeing that the defendant Bramley is well founded in the allegations of his incidental demand or *demande en garantie* against the defendants *en garantie*, The Sincennes-McNaughton Company, who have made default on said *demande en garantie*, doth maintain the said incidental demand with costs against the said The Sincennes-McNaughton Line, *distraits*, etc."

The Mechanics Bank appealed.

The Sincennes-McNaughton Line also appealed from the judgment on the incidental demand, contending that the notes sued upon were given in renewal of notes for like amounts made by Bramley for the accommodation of McNaughton, and consequently, he, Bramley, had not been injured if McNaughton used the notes for his own purposes.

The judgment in each case was confirmed unanimously. The Court held that Wm. McNaughton, who was Vice-President of the Company at the time, gave these notes, on his private account, to renew other notes which were not endorsed by the Sincennes-McNaughton Line. The Mechanics Bank knew that the notes were not the property of McNaughton, but of the Sincennes-McNaughton Line. Tho form in which they were drawn indicated its

As to the incidental demand, Bramley had a right to be indemnified.

(RAMSAY, J., took no part in the judgment.)

Monk & Butler for Mechanics Bank.

Coursol, Girouard, Wurtele & Sexton for Sincennes-McNaughton Line.

Mathieu & Gagnon for Bramley.

MONTREAL, Sept. 22, 1879.

CENTRAL VERMONT R. R. Co. (defts. below), appellants; and PAQUETTE (plff. below), respondent.

Railway—Evidence of ownership—Pleading.

This was an appeal from a judgment condemning the appellants to pay $100 damages, for the value of some cattle which had been killed by a passing train, on the appellants' line of railway, between Farnham and Waterloo. The plea was to the effect that the cattle were killed in consequence of the negligence of the respondent himself. There was also a *défense en fait.*

The Court below, Sicotte, J., held that the appellants' line of railway was not sufficiently fenced in, and that the accident occurred in consequence of this neglect. Judgment was, therefore, given for $100, the proved value of the cattle killed.

In appeal, the Company submitted that it was not proved that they owned, worked, or controlled the road which was known as the Stanstead, Shefford & Chambly Railroad, and that in the absence of written proof, such as a lease or agreement, some verbal testimony should have been adduced.

Sir A. A. DORION, C. J., considered that the judgment was correct on the merits of the contestation in the Court below. As to the point which had been raised in appeal, either the Company passes over the road as a trespasser, or it has a right to do so, and that right it derives from the real proprietors. In either case it could not be relieved from responsibility for accidents.

MONK, J., remarked that one of the difficulties, to his mind, was that the appellants had pleaded a peremptory exception, and this exception took up as it were the *fait et cause* of the other railroad company, the proprietors of this road. It alleged that the fences were good, thereby vindicating as it were the state of things.

Judgment confirmed.

Davidson, Monk & Cross for appellants.

Beique & Choquet for respondent.

POITRAS (plff. below), Appellant; and BERGER (deft. below), Respondent.

Lease—Right of property in leased premises—Art. 1625 C. C.—Emphyteutic lease.

The action was brought to recover $200 rent, and to obtain the resiliation of a nine years' lease from the appellant to Isabella Moir, who had assigned her rights thereunder to the respondent. Isabella Moir having since become insolvent, her assignee, Lajoie, was *mis en cause.*

The respondent pleaded that by a deed passed 27th December, 1877, the appellant, having renounced her usufruct in the property leased, had ceased to have any right or interest therein.

The Court below (Rainville, J.) maintained the plea, the judgment being as follows:—

"La Cour, etc.

"Considérant que la demanderesse en cette cause, n'était qu'usufruitière de la propriété louée en question en cette cause;

"Considérant que la dite demanderesse, par acte du 27 Décembre, 1877, a renoncé à son usufruit de la dite propriété en faveur des nus-propriétaires et grevés de substitution, et à son droit au bail en question;

"Considérant que par suite de la dite renonciation, le dit usufruit s'est trouvé éteint et réuni à la nue-propriété, et qu'en conséquence la dite demanderesse est maintenant sans droit dans le bail qu'elle avait consenti à Isabella Moir, et en vertu duquel la présente action est intentée;

"Considérant qu'un acte de cession ou d'abandon d'usufruit n'a pas besoin d'être signifié au locataire pour saisir l'acquéreur ou le nu-propriétaire;

"Maintient l'exception en second lieu produite par le défendeur à l'encontre de l'action de la demanderesse, et déboute la dite demanderesse de son action, le tout avec dépens."

MONK, J., dissenting, thought that the judgment was correct. The appellant, having no possession or right whatever in the property leased, brought an action to set aside her lease to Isabella Moir, and also to annul the transfer

to Berger. The defendant pleaded that the plaintiff should have brought all the parties into the record who were parties to the lease, and Isabella Moir should have been made a party. He further pleaded that at the time of bringing this action the plaintiff had no longer any interest in the property leased. The Court below, seeing the nature of the action (which was not only for rent, but to set aside an emphyteutic lease), did not attach any importance to the first plea, but dismissed the action upon the second exception, holding that the plaintiff, having renounced her usufruct, had no right to institute an action to set aside an emphyteutic lease. This judgment seemed to him, Mr. Justice Monk, to be well founded.

Sir A. A. DORION, C.J., said that the judgment had to be reversed, on a principle which had invariably been acted upon in this province, that a tenant cannot say to his lessor, "you are not the proprietor of the house which you leased to me." This had often been decided. Berger pleaded that since the date of the lease the lessor had ceded her right. But what was that to Berger? When he paid his rent to the lessor, the payment would be good, and he would be discharged. It made no difference to him if she was not proprietor when she leased, or if she had ceased to be proprietor. There was a little difficulty as to whether Art. 1625 applies. That article says: "The judgment rescinding the lease by reason of the non-payment of the rent is pronounced at once, without any delay being granted by it for the payment; nevertheless the lessee may pay the rent with interest and costs of suit, and thereby avoid the rescision at any time before the rendering of the judgment." This article, in the opinion of the majority of the Court, did not apply. This was not an ordinary lease, but an emphyteutic lease. The respondent would, therefore, be allowed fifteen days to pay, otherwise the lease would be rescinded.

RAMSAY, J., remarked that there was a difficulty about Art. 1625; but it referred only to ordinary leases. This was something more than a lease, and it did not apply. His Honor suggested that in the legislation which was constantly taking place in amendment of the Codes, the subject of penal clauses deserved attention.

The judgment was as follows:—

"La cour, etc.

"Considérant que par bail fait à Montréal le 8 Juin, 1877, devant Mtre. Durand, N. P., l'appelante à loué à Dame Isabella Moir, épouse de Noel Pratt, pour un terme de neuf années, à compter du premier Mai alors dernier, une maison en pierre et dépendances y désignées;

"Considérant que ce bail a été fait pour la somme de $1200 par année, payables par douze paiements mensuels le premier jour de chaque mois, et, en outre, à la charge de faire des améliorations importantes détaillées au dit bail;

"Et considérant qu'il a été stipulé au dit bail que dans le cas où la dite Isabella Moir négligerait pendant 15 jours de payer les termes de loyer échus, l'appelante aurait le droit de faire résilier le dit bail;

"Et considérant que, par acte du 13 Août, 1877, la dite Isabella Moir a transporté à l'intimé ses droits en vertu du dit bail;

"Et considérant que l'appelante a consenti à ce transport, et qu'elle l'a formellement accepté par sa déclaration en cette cause, et que, de son côté, le dit Charles Berger a payé plusieurs termes du loyer échus en vertu du dit bail;

"Et considérant que lorsque l'appelante a porté son action le 26 Septembre, 1878, il lui était dû $200 pour deux mois de loyer échus le 1 Août et le 1 Septembre, 1878;

"Et considérant que l'obligation contractée par l'appelante, dans le bail qu'elle a consenti à la dite Isabella Moir, consiste a faire jouir celle-ci, et à la garantir de tous troubles dans la jouissance des lieux loués, et ce, sans égard aux droits de propriété ou autres que la dite appelante pourrait avoir sur iceux;

"Et considérant que le dit Charles Berger qui est aux droits de la dite Isabella Moir, ne fait pas voir qu' il ait aucun intérêt à opposer à l'appelante qu' elle a renoncé au droit qu' elle avait à titre de grevé de substitution sur la propriété louée, ni qu' il ait été troublé dans la jouissance d'iceux, et que son exception, que l'appelante, à raison de telle renonciation, n'a plus le droit de recouvrer le loyer stipulé au dit bail, est mal fondée;

"Et considérant que le syndic à la faillite de la dite Isabella Moir, étant l'un des défendeurs, la prétention que l'appelante aurait dû mettre en cause la dite Isabella Moir pour faire pro-

noncer la resiliation du dit bail, est également mal fondée ;

"Et considérant qu'il y a erreur dans le jugement de la Cour Supérieure rendu à Montréal, le 13 Novembre, 1878, qui a renvoyé l'action de l'appelante ;

"Et considérant que l'article 1625 C. C., n'est pas applicable au bail fait par l'appelante à la dite Isabella Moir, qui contient les clauses d'un bail emphytéotique, la cour inférieure aurait dû condamner le dit Charles Berger à payer à l'appelante la somme de $200 avec intérêt à compter du jour de l'assignation, et déclarer le dit bail résilié et résolu dans le cas où le dit Charles Berger, comme représentant la dite Isabella Moir, n' aurait pas payé la dite somme de $200 sous un délai qu' elle aurait fixé ;

"Cette cour casse et annule de dit jugement &c., et condamne le dit Charles Berger à payer à l'appelante la dite somme de $200, avec intérêt sur icelle à compter du 26 Septembre, 1878, jour de l'assignation en cette cause, et les dépens, tant en cour inférieure que sur le présent appel ; et cette cour adjuge et ordonne que faute par le dit Charles Berger de payer la dite somme de $200, intérêt et dépens, comme susdit, sous le délai de 15 jours de la date de ce jugement, le dit bail du 8 Juin, 1877, sera, et il est déclaré par les présentes, et sans qu' il soit besoin d'autre jugement à cet effet, résilié et résolu, à toutes fins que de droit, et que, dans ce cas, la dite appelante soit remise en possession des lieux loués, sous l'autorité de la dite Cour Supérieure (*Dissentiente* l'hon. M. le juge Monk)."

Bonin & Archambault for appellant.

Archambault & David for respondent.

CURRENT EVENTS.

ONTARIO.

THE Q. C. QUESTION.—At the opening of the Court of Common Pleas, at Toronto, Nov. 20, Mr. Bethune appeared habited in a stuff gown, and took his seat outside the Bar of the Court. Upon his rising to make a motion,

Chief Justice Wilson said:—"Mr. Bethune, I dare say some gentleman within the Bar will lend you a silk gown if you have forgotten yours."

Mr. Bethune, in reply, said:—"My Lords, I think it is due to the Court that I should state why I am not this morning within the Bar. I was present in the Supreme Court when the judgment of that Court was delivered in the case known as the Great Seal Case. All the judges agreed that the Governor-General had the sole prerogative right to appoint Queen's Counsel in Canada. Three of the Judges held that the statute of Nova Scotia, which is the same as that in Ontario, if it attempted to invade the prerogative right in question, was void, and that persons appointed by the Lieut.-Governor in pursuance of the statute of the Legislature were not Queen's Counsel properly so called. Justices Henry and Gwynne said that the Act of the Legislature was *ultra vires*. Mr. Justice Taschereau held that the Provincial Legislature might establish an order of precedence as between barristers who were not Queen's Counsel so created by the Governor-General, but that the members of that order were not Queen's Counsel any more than a nobleman who was created such by a statute of the Manitoba legislature would be a lord. Inasmuch as this judgment was from a judgment in a Provincial Court, it seemed to me, and I am still of that opinion, that I ought not to wear an honor my title to which is said to be doubtful."

Chief Justice Wilson:—"I am sorry, Mr. Bethune, that you are not within the Bar, but, after hearing the judgment of the Supreme Court in the matter, I think you act quite rightly. However, if we cannot have you in your old place, we shall be glad to hear you without the Bar."

Shortly afterwards, Mr. Thomas Ferguson, who holds his patent as Queen's Counsel from the Lieutenant-Governor, desired a further expression of opinion from the Court as to the propriety of Queen's Counsel so created remaining within the Bar.

The Chief Justice said:—"We think Mr. Bethune has acted quite properly in declining to wear a silk gown when the judgment of our highest Court questioned his right to wear that honor. We do not intend this to be a decision of the Court, but merely an expression of our opinion in the matter. Were I in Mr. Bethune's place I should have acted precisely as he has done."

Mr. Justice Galt remarked that he also considered that Mr. Bethune had taken the proper course.