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TABLE OF CASES

REPORTED, NOTED AND DIGESTED,

In Vol. III.

ERRATA.—P. 3, col. 1, line 23, for "phonasm," read "pleonasm."
P. 8, col. 1, line 36, for "Superior Court," read "Court of Review."
P. 29, col. 2, line 29, for "prouvé," read "prouvée."
P. 29, col. 2, line 32, for "illégale" read "illégal."
P. 34, col. 2, line 23, for "Company," read "Corporation."
P. 55, col. 2, line 19, for "élevait," read "élevât."
P. 55, col. 2, line 39, for "intimé," read "intimée."
P. 130, the last line of 2nd column should be the last line of 2nd column of, p. 129.
P. 166, for "*Mondon*," read "*Mondou*."
P. 316, *Faucher* v. *Painchaud*; the judgment was by Torrance, J.
P. 331, line 2 of column 2, read "against absentees, like defendant," after the words "*pro confessis*."

The Legal News.

Vol. III. JANUARY 3, 1880. No. 1.

A QUESTION OF COSTS.

The appeal in the case of *Montrait & Williams* raised a question of costs of considerable importance. The judgment of the Court was unanimous, but the unanimity can hardly be said to go much further than this: that costs are a matter very much in the discretion of the tribunal of first instance, and that the Court of Appeal will require a very clear case of injustice to induce it to interfere with the adjudication on this head by the Court below. The action was between husband and wife—the latter suing for a separation—and after the case had been a long time in litigation, and one judgment in favor of the plaintiff had been set aside in appeal on account of irregularities, the husband induced the wife to sign a settlement, by which she was to receive $40 per month of alimony, in consideration of which she agreed to discontinue the action, *but without costs.* There is no doubt that these words were introduced into the settlement at the suggestion of the husband for the purpose of depriving the wife's attorneys of their costs; and when the husband produced the deed in Court, the Judge simply granted him *acte* of its production, and declared the action to be terminated on payment of the costs due to plaintiff's attorneys. The Court of Appeal confirms this judgment, and, as the note in our next issue will show, the three Judges who spoke in the case were all agreed not only that the Judge had a discretion to exercise, but that under the circumstances he had exercised it wisely. Mr. Justice Monk, apparently, was not disposed to go further than this. He held himself free to treat each case on its individual merits. The Chief Justice and Mr. Justice Ramsay were not in accord upon the question of the right of a lawyer to continue a suit for costs, after a settlement between the parties. The Chief Justice was of opinion that where the defendant has settled the case by paying the demand or part of it, and thus acknowledged that the plaintiff had justice on his or her side, but has stipulated for discontinuance of the suit without costs with the object of defrauding the plaintiff's attorneys of their costs, the Court may, in its discretion, grant the discontinuance subject to payment of the attorney's costs. Mr. Justice Ramsay, on the other hand, took the ground that the plaintiff's attorneys should trust to the solvency of their own client for their costs, and should not advance funds for the maintenance of suits on behalf of impecunious suitors. But the learned Judge arrived at the same result as his colleagues, on another ground, viz., that by Art. 205 C. P., no one can revoke the powers of his attorney without paying his costs, and there can be no discontinuance in the case without the attorney's privity and consent. Therefore, even after an agreement by both parties to discontinue, the discontinuance could not be recorded in the cause while the attorney's claims were unsatisfied.

We are inclined to think that Mr. Justice Ramsay's view,—that the attorney must trust to his own client's ability to pay him,—is the one which is practically acted upon every day by the Courts of first instance. It constantly happens that the costs of an action or a contestation are divided,—the action or contestation is dismissed, or maintained, but without costs, and this for some reason personal to the client or the cause, and not having anything to do with the attorney's management of it. Is not the exercise of such a power by the Court based on the assumption that the attorney is sufficiently protected by his recourse against his own client? Otherwise, in striking at the suitor the Court would often be punishing the attorney; in dismissing an action without costs, for example, the defendant's attorneys might be made to suffer vicariously.

THE COURT OF REVIEW.

The business of this Court has increased very considerably, and is still increasing. At the present time there are probably as many cases taken to Review as to the Court of Queen's Bench, and as neither the factums nor the evidence is printed, the labor entailed upon the Judges is evidently of no light description. A good deal might be said as to the expediency of continuing this Court at all. Since the establishment of the Supreme Court, there are four

tribunals in Canada through which a case may be dragged, and in which the same facts and arguments are repeated *ad nauseam*. If the proposition should be carried out, of having four Judges of the Queen's Bench sitting in appeal in Montreal from day to day, we think the intermediate tribunal might be dropped out, and a great economy of judicial labor effected. Some modification of the costs in Appeal might be expedient. However, at present we simply wish to direct attention to the observations made by Mr. Justice Johnson on the 29th ultimo, with regard to the conduct of business before the Court. The Judges are desirous that the factums of the parties shall be filed not later than the 12th of the month in which the cases are to be argued. This is so reasonable a requirement that it needs no explanation. If the case is one of any complication, the argument before Judges who have made themselves familiar with its difficulties, by a perusal of the factums, is really as valuable as a rehearing. Attention was also once more directed to the illegible character of many of the documents put into the record. Only a few days ago, Mr. Justice Torrance was forced to send down a record, in order that an illegible paper might be replaced by one that did not require the services of an expert to decipher it. So much of the day time is spent in hearing cases that Judges are forced to examine records by artificial light, and unless Mr. Edison can give us something better than that supplied by the Gas Company, it is desirable that the papers forming the record should be written in a clear hand, and with a fluid superior to much that passes in these days under the name of ink.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 20, 1879.

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

CORPORATION OF COUNTY OF DRUMMOND (plffs. below), Appellants, and SOUTH EASTERN RAILWAY CO. (defts. and opposants below), Respondents.

Railway—Right of hypothecary creditor to bring the property to sale.

This case raised the important question, whether a railway owned by an incorporated company may be seized and brought to sale by bondholders to whom a hypothec on the property has been granted under authority of a statute. The appeal was from a judgment of the Superior Court, Dunkin, J., for which see 1 Legal News, p. 137; 22 L.C.J., p. 25.

TESSIER, J., (*diss.*,) said there was no doubt that a railway constructed by a private corporation, or by individuals, may be seized. But in this case the railway was constructed under a public statute which authorized the opening of the railway with a servitude of passage. In expropriating the land required for the railway they paid the value of the part expropriated, taking into account the improvement in value of the remainder. This was a property different from an ordinary immoveable. The Company obtained its privileges subject to the obligation of keeping the road in operation. To permit the sale of a part would be to prevent the working of the line as a whole. The jurisprudence of England and France did not allow such seizure. His Honor, in an opinion of some length, supported the view that the judgment was correct, and ought to be confirmed.

Sir A. A. DORION, C.J., said the majority of the Court were of opinion that the railway could be seized. The Richelieu, Drummond and Arthabaska Railway Company were authorized by statute to issue bonds, and a hypothec was given on the railway to secure the holders of these bonds. On the amalgamation with the South Eastern, the rights of the bondholders were specially reserved, so that the bondholders of the R. D. & A. Company were in the same position with respect to the South Eastern. The bondholders were, by law, granted a hypothec, and this gave the right to seize the property, if they were not paid, and to cause it to be sold. In England, railways could not be sold, but the English mortgage was a different thing from our hypothec. The mortgagee was allowed to take possession of the property; but the hypothec only gave the creditor the right to bring the property to sale and to be paid out of the proceeds. A railway was not the property of the public. It was subject to municipal taxes, and had been made to pay *lods et ventes*. It might be compared to a toll bridge. As to the argument that the property was in different jurisdictions, there were special provisions applicable to the seizure of pro-

perties which extended beyond one district. The creditor here only seized what was in the jurisdiction. The sale would be subject to the obligations devolving on the original owners.

RAMSAY, J. Probably there is no doubt what the law ought to be in this matter. The object of granting a charter to a railway company is much more to confer a benefit on the public than to further a speculation. The powers granted to expropriate are an evidence of this. It would, therefore, have been very wise in the legislature to have made such provision as would have secured the permanence of the institution. But the question is, has this been done, or, more properly, has not the legislature done precisely the reverse? The learned Judge in the Court below has with great force shown how unwise it is to have given the right to a railway company to hypothecate its line; but I think the very clearness of his exposition shows only more abundantly how critical the position of the respondents is. To borrow the ingenious phonasm of the learned Judge, it is precisely because the railway company "has done all it has done, holds all it holds, and is all it is by virtue of" special legislation that I think it behoves the Courts diligently to enquire what that legislation has enacted. If the terms of the positive law are ambiguous, and consequently open to interpretation, then all the considerations put forth by the learned Judge might apply. But if, on the other hand, the law has expressly given to the Railway Company the power to hypothecate the realty of the road as their property, then there is an end to speculation as to whether the right to take property for public uses is derivable from the right of eminent domain, and whether the right acquired by the taker is only an easement. The learned annotator of the 1st Institute says: "Arguments from inconvenience certainly deserve the greatest attention, and where the weight of other reasoning is nearly on an equipoise ought to turn the scale. But if the rule of law is clear and explicit, it is in vain to insist upon inconveniences; nor can it be true that nothing which is inconvenient is lawful, for that supposes in those who make laws a perfection which the most exalted human wisdom is incapable of attaining, and would be an invincible argument against ever changing the law." 3 Coke, 65 a. n. 1.

If I were to be tempted into a historical dissertation, I might, perhaps, question the reference of the right of taking lands for public uses to the right of eminent domain, and show that this was only the feudal explanation of a right much more ancient, and of much wider extent than the reach of English law; and I might be further induced to try to establish that the easement theory is of still more modern invention. It was hardly the idea of William Rufus when he made his hunting grounds, or of Louis XIV. when he founded Versailles.

We have, therefore, to enquire what the appellant's title is. His claim to be an hypothecary creditor is founded on a debenture in a statutory form, in which we find the following clause: "And for the due payment of the said sum of money and interest, the said Company, *under the power given to them by the said statute*, do hereby mortgage and hypothecate the real estate and appurtenances hereinafter described, that is to say: "*The whole of the railroad from.... including all the lands at the termini of the said road, and all lands of the Company within these limits, and all buildings thereon erected, and all and every the appurtenances thereto belonging.*"

I do not see how it is possible to use stronger words, to give an hypothec, than these, and to refuse to give them effect appears to me to be simply breaking faith with the bondholders. It may be very unwise for a bondholder to press his right in this form; but with his discretion we have nothing to do. An argument was used by the Court below, that this bond gave opening to interpretation because of the use of the word mortgage along with the word hypothec. But it should be observed that the bond is only made "under the power given by the statute," and that in the statute the word "hypothec" occurs alone. This then would control the bond. But, in addition to this, it is a piece of information almost too simple to require to be insisted on, that the word mortgage has been constantly used in this country as the translation of *hypothèque*. Can it be gravely pretended that in all the English deeds where the words "doth mortgage and hypothecate" are used, the mortgagee loses his hypothecary right? If not in these cases, why in this, unless it be to give a transparently insufficient reason to defeat the law? When the title "Of Obligations" was being prepared, the incorrect

expression "mortgage" was carefully excluded as expressing something quite different from *hypothèque*, and there being no English word, the word "hypothec" was borrowed from the Scotch law.

It seems, however, to be argued that the jurisprudence in England and France, differing from that of the United States, supports the view of the Court below. With this opinion I cannot agree. It seems to me that the principle on which all the reported decisions which have been brought under our notice turn, is directly opposed to that of the judgment of the Court below. To take the case of *Gardiner & The London, Chatham & Dover Railway Co.*, (L. R. 2 Ch. App. p. 201), the suit was to appoint a manager. The Court held that it had no power to appoint a manager for a continuous undertaking, and that under the terms of the bond, in conformity with the statute, what was pledged was the undertaking, and the tolls arising therefrom. Turner, L.J., said, "My opinion is, that *upon the true construction of this debenture*, it proceeds upon the footing of the railway being treated as a continuing and going concern, and that it operates only to charge the railway and the works connected with it, and the tolls and sums of money of the like nature arising from it, in favor of the debenture mortgage. Had it been intended to go further, and to charge the capital of the railway company, and the surplus lands, as it was contended before us that it does, there can be no doubt that apt words could have been found for that purpose, and I think that such would have been inserted in the instrument."

With such an expression of opinion as this, can it be contended that the Lords Justices would have tortured words so explicit as those used in this debenture, from their true sense to carry out a supposed intention?

There has been reference to the rule in France. It is not very profitable to examine systems so different from ours. Perhaps it is not very easy to draw any very conclusive argument from their highly organized administrative system; but so far as I have been able to become acquainted with it, I should not be prepared to say it was not the same as that laid down by the Lords Justices. They follow there the express law of the charters of the railways. They are called concessions, and really they are no more than a terminable right of *exploitation*. In one of the French cases cited by the learned Judge in the Court below, I find the holding to be in these words: "Les chemins de fer *construits ou concédés par l'Etat*, sont une dépendance du domaine public, et ne sauraient des lors appartenir aux compagnies concessionnaires *qui n'en ont que l'exploitation*." (Dalloz, 1861, p. 225, 1st col.) And so the property of the company is moveable.

In any case we could not here consider railways as forming part of the public domain. At Quebec some little time ago, we held the G. T. Railway liable for a local tax, part of which was to be applied as a subsidy to another railway company.

As for the law in the "greatest railway country in the world," as appellant's counsel enthusiastically designates the United States, so far as I have been able to understand the law, the rights of bondholders are determined by the terms of their bonds.

I would therefore reverse.

CROSS, J., concurred.

MONK, J., in reference to the case of *Morrison & Grand Trunk Railway Company* (5 L.C.J. 315), said that there he had held that the Court could not name a sequestrator to the railway. There was no law authorizing the appointment of a receiver, and it was impossible to give him authority in the various jurisdictions traversed by the railway. But here the law authorized the giving of a hypothec on the railway. The Company had done so, and the case was very different from that of Morrison. The hypothec being authorized by law, the ordinary mode of enforcing a hypothec must be followed.

The judgment in appeal is as follows:—

"The Court, etc.

"Considering that judgment was rendered in this cause on the 24th November, 1876, in favor of the appellants, for the sum of $11,416 cy., with interest as therein mentioned, being the amount of certain coupons attached to certain debentures issued by the Richelieu, Drummond & Arthabaska Counties Railway Co., on the 20th day of June, 1871;

"And considering that by the Act of Incorporation of the said Richelieu, Drummond & Arthabaska Counties Railway Company, the said Company was authorized to issue the said

debentures, and thereby to hypothecate the real estate and appurtenances therein described, being the same which are seized in this cause;

"And considering that the said debentures on which the said judgment was rendered, were issued in conformity to the provisions of the said Act, and the form thereby given mortgaging and hypothecating the said real estate and appurtenances;

"And considering that by virtue of Art. 2016 of the C. C. of L. C. and by law, the appellants, as holders of the said debentures, and by virtue of their said judgment, had a right to cause the said property, real estate and appurtenances so hypothecated to be sold in the hands of whomsoever they might be;

"And considering that by the Statute 36 Vict. cap. 51, being an Act to amend the Acts respecting the Richelieu, Drummond & Arthabaska Counties Railway Company, to confirm certain agreements between the said Company and the South Eastern Counties Junction Railway Company, and for other purposes, it is provided that all the rights and remedy of all municipalities and creditors of every class and degree of the said Richelieu, Drummond & Arthabaska Counties Railway Company should continue to exist unimpaired and be in no way lessened, and that all classes of bondholders, having mortgages on any real estate of the said Company, should continue to have unimpaired, and be maintained in their several rights and privileges as if the said Act had never been passed;

"And considering that the said appellants were entitled to cause the said property so hypothecated by the said debentures to be seized and sold for the payment of the amount of their said judgment;

"And considering that the seizure made of the said property was and is regular, and cannot be avoided for any of the reasons assigned in the opposition *afin d'annuler* of the said respondents;

"And considering that there is error in the judgment rendered by the Superior Court, at Montreal, on the 21st day of February, 1878, setting aside the said seizure;

"This Court doth cancel and annul the said judgment of the 21st day of February, 1878; and proceeding to render the judgment which the said Superior Court should have rendered, doth dismiss the said opposition *afin d'annuler* of the respondents, and doth condemn the said respondents to pay to the said appellants the costs incurred as well in the Court below as on the present appeal. (The Hon. Mr. Justice Tessier dissenting.)"

Trenholme & Maclaren, for appellants.

E. Carter, Q.C., for respondents.

MONTREAL, Dec. 22, 1879.

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

ADAM (plff. below), Appellant, and FLANDERS (deft. below), Respondent.

Registration—Judgment registered against real estate attaches, though the property had been previously sold to a third party, if the sale was not registered until after the registration of the judgment.

The appeal was from a judgment of the Circuit Court, District of St. Francis, dismissing a hypothecary action. The judgment was in these terms:—"Defendant, being the owner in good faith of the property in question in this cause, under deed of sale, before the judgment under which plaintiff claims hypothec in this cause was rendered, whether actual delivery was made or not, this action is dismissed with costs."

The sale was registered within thirty days, but appellant submitted that the delay allowed by article 2083 C.C. is for the exclusive benefit of the vendor.

MONK, J. (*diss.*) found it impossible to concur in the judgment about to be rendered. He was of opinion that a judgment can be registered only against property in the possession of the judgment debtor, and that registration against a property which has been sold by the debtor previously is without effect. He considered that this was the correct interpretation of Art. 2026, "Legal hypothec affects such immoveables only as *belong* to the *debtor*," &c. He was, therefore, of opinion that the judgment should be confirmed.

Sir A. A. DORION, C.J., said the majority of the Court was of opinion to reverse the judgment. Although the sale took place three weeks before the judgment was registered against the property, yet as regards third parties the registration alone conferred title, and not the sale; and the registration of the sale was posterior to the registration of the

judgment. His Honor referred to the *projet* of the Code, and to the modification of the law which had taken place. There was an omission in the Code, but the intention was to be inferred from the several articles relating to the subject. Art. 2030 had a direct bearing on it, because it showed that a sale had no preference over a mortgage. The rule which the majority of the Court adopted was that a mortgage or sale has no effect as regards third parties until it is registered. The debtor, Poyet, might have sold the property to a third party, and if the latter had registered first he could take possession from Flanders. There is no difference between the judicial and conventional hypothec in this respect. For instance, if Poyet, after selling the property to Flanders, had given a *hypothèque* on it to Adam, and Adam had registered it before the registration of the sale, it would affect the property the same as the registration of the judgment. His Honor concluded by saying that the *considérants* (given below) showed the grounds on which the judgment rested.

RAMSAY, J. The appellant obtained judgment against one Poyet for $35 and costs, on the 13th December, 1877. On the 17th December, 1877, the said judgment was registered against the property mentioned in the declaration "as appearing to be the property and in the possession of the said Poyet," as it is contended within the terms of Art. 2121 C.C.: "The judgments and judicial acts of the civil courts confer hypothecs when they are registered, from the date only of the registration of a notice specifying and describing *the immoveables of the debtor* upon which the creditor intends to exercise his hypothec." On the night which followed the rendering of the judgment, that is, the night of the 13th to the 14th of December, 1877, Poyet left his home with all his moveables, and has not since been heard of. Subsequently the appellant found the respondent in possession of the premises, and as she would not pay his claim he sued her hypothecarily as *tiers détenteur*. To this action respondent pleaded that she had purchased the land in good faith and paid for it on the 20th November, 1877, and that she had registered her title on the 20th December of the same year; and that consequently when the judgment against Poyet was rendered on the 13th December he was not owner of the land in question. In support of her pretention she produced a deed *sous seing privé* which was supported by parol testimony. It is now contended that this parol testimony was not admissible, and that, therefore, the judgment of the Court below should be reversed. I don't think we can look at any question of evidence on this appeal. From the way in which it has come up, we can only look at the law. We could not safely say that evidence which we do not see is irregularly taken. But in any case it seems the *sous seing privé* deed for the sale of lands in the Townships makes proof if supported by parol testimony, and if so, it must be sufficient to fix its date by oral evidence.

The case is argued in appellant's factum as a question of fraud. There appears to be no suggestion of fraud so far as I can see, but one simply of law, that is to say, whether the unregistered title of the purchaser is to be defeated by the registration of a judicial hypothec subsequent to the sale.

I may at once say that I do not think the first portion of Art. 2100 C. C. affects the case. The thirty days given for registration is in favor of the vendor. It may perhaps be asked why it, or some other delay, was not also given in favor of the purchaser; but the answer is the law has so willed it, and has made rules applicable to registration where a delay is specially allowed and where it is not. It was primarily the duty of the purchaser to register. That would have given effect to her title and ensured its priority (C. C. 2082). But if no penalty is attached to her failure to register, then her title, being perfect, must prevail (C. C. 1025). In default of such registration her title of conveyance could not be invoked against any subsequent purchaser who had registered his title (C. C. 2098), provided the two purchasers had a common *auteur* (C.C. 2089). There is no article which declares, in so many words, that the hypothec acquired and registered subsequent to the sale shall take precedence of the unregistered conveyance; but in Art. 2130 we find that "if a deed of purchase and a deed creating a hypothec, both affecting the same immoveable, be entered at the same time, the more ancient deed takes precedence." This seems to imply that if they were entered at different times the first registered would take

precedence, otherwise the rule would be of no use. In the absence, however, of a special article it is not without doubt whether a Court should extend its discretionary power to interpret legislative enactments so as to introduce a totally new rule of law. I am inclined, however, to think that in a case where there is a rule of an analogous character, containing precisely the principle invoked, and a further disposition seeming to imply that it was the intention of the legislature to include the case not specially provided for, it is competent to the courts to interpret the law so as to include it.

But this does not decide the case. The point on which it turned in the Court below was, that as this was a judicial hypothec it could only attach to property possessed at the time when the judgment was rendered. This was not a difficulty before the Code, but now, it appears that this distinction only applies to judgments before 1st September, 1860, (C.C. 2036). We, therefore, have one article (2034) expressing the law as to the hypothec of judgments generally, then we have a provision as to their effect before the 31st December, 1841, (2035), and again another as to their effect between this date and the 1st September, 1860; but none as to those since. How do they attach? This is provided for by the article already cited (2121). But here another difficulty arises: they only attach "on notice specifying the immoveables of the debtor." Was the immoveable in question an immoveable of the debtor on the 17th December, 1877, when the registration took place? If not, are we to extend the interpretation we have given to the law, on the strength of art. 2130, to judicial hypothecs? The English version uses the word "deed," which would seem to exclude a judgment supplemented by a notice specifying and describing the immoveables. A deed is an instrument in writing comprehending an agreement or contract. It is somewhat more circumscribed than an "*acte*" in French. But this difficulty is avoided by the French version of the Code which uses the generic word *titre*, and, curiously enough, in the English version the word title is used in an exactly analogous case immediately preceding the one quoted in the same article. I am, therefore, disposed to think now, that the alteration of the law in the Code, which was not mentioned at the bar, and probably not brought before the learned Judge in the Court below, is in favor of appellant, and that the judgment should be reversed.

TESSIER, J., remarked that in *Dallaire & Gravel*, the parties had not the same *auteur*, but here they derived their title from a common *auteur*. The registration of the purchase was made within 30 days after the sale, but this delay was a privilege granted in favor of the vendor and not of the purchaser.

The judgment is as follows:—

"Considering that the judgment which the appellant obtained on the 13th day of December, 1877, against Jean Baptiste Payet, was duly registered on the 17th of December, 1877, with a notice describing the property thereby affected as required by art. 2026;

"And considering that the deed of sale *sous seing privé* by the said Jean Baptiste Payet to the respondent of the 20th day of November, 1877, although anterior in date to the said judgment, was only registered after the said judgment had been registered, to wit, on the 20th of December, 1877;

"And considering that according to Article 2130, real rights which are subject to registration, other than those therein excepted, take their rank according to the date of their registration, and that neither the judgment obtained by the appellant against the said Jean Baptiste Payet, nor the deed of sale by the said Jean Baptiste Payet to the respondent, fall within any of the exceptions mentioned in said article;

"And considering that from the dispositions contained in Articles 2036, 2080, 2098, 2120 and 2130, the said appellant has acquired a judicial *hypothèque* on the property described in the declaration in this cause, from the date of the registration of the said judgment and notice describing the said property;

"And considering that by virtue of Articles 1027 and 1472 of the Civil Code, the respondent, in the absence of registration of her deed of purchase, acquired no title to the said property as against the said appellant who had registered his judgment prior to the registration of her said deed of purchase;

"And considering that there is error in the judgment rendered by the Circuit Court, sitting at Sherbrooke, on the 14th day of October, 1878;

"This Court doth reverse the said judgment of the 14th day of October, 1878, and doth condemn the respondent to pay to the appellant the costs on the present appeal, and rendering the judgment which the said Circuit Court ought to have rendered, doth declare the piece or parcel of land described in the declaration as follows, to wit [the description follows] to have become and to be bound, affected and hypothecated for and to the payment of the sum of $35 and interest from the 8th day of October, 1877, and costs incurred in the said Circuit Court, and the said respondent is hereby condemned to quit, deliver up and abandon the said immoveable within 15 days of the service upon her of the present judgment, in order that the same be sold according to law upon the curator to be appointed to the *délaissement*, the proceeds of the sale thereof to be applied to the payment of the said sum of $35, with interest on said sum of $35 from 8th October, 1877, and costs of suit, unless the said respondent prefers to, and do pay to the said appellant the said sum of $35, interest as aforesaid, and costs of suit, and in default of the said respondent to quit and abandon the said immoveable and to pay the said sum, interest as aforesaid, and costs, within the delay aforesaid, doth condemn the said respondent to pay and satisfy to the said plaintiff the said sum of $35, with interest on the said sum of $35 from the 8th October, 1877, and costs incurred in the said Circuit Court. (The Hon. Mr. Justice Monk dissenting.)"

L. C. Bélanger, for appellant.

Hall, White & Panneton, for respondent.

SUPERIOR COURT.

MONTREAL, November, 1879.

SICOTTE, MACKAY, TORRANCE, JJ.

EASTWOOD v. CORRIVEAU et al.

Deposit in Review.

Held, that the amount of deposit in Review is regulated by the amount of plaintiff's demand, although the proceeding be in compulsory liquidation.

Beaudin for plaintiff.

Beique for defendant.

JOHNSON, TORRANCE, RAINVILLE, JJ.

SAME CASE.

Review—C.C.P. 500.

Held, that the respondent in Review cannot under C.C.P. 500 compel his adversary to argue his appeal sooner than 8 days after the date of the inscription.

RECENT ENGLISH DECISIONS.

Water Course.—The right to the water of a river flowing in a natural channel through a man's land, and the right to water flowing to it through an artificial water course constructed on his neighbor's land, do not rest on the same principle. In the former case each successive riparian proprietor is, *prima facie*, entitled to the unimpeded flow of the water in its natural course, and to its reasonable enjoyment as it passes through his land, as a natural incident to his ownership of it. In the latter, any right to the flow of water must rest on some grant or arrangement, either proved or presumed, from or with the owners of the lands from which the water is artificially brought, or on some legal origin.—*Rameshur*, &c., v. *Koonj*, &c., 4 App. Cas. 121.

Will.—E., by will made in 1826, gave certain freehold lands to his mother, "to hold unto her * * * * her heirs and assigns for ever." The will was properly attested, the interlineation of two words being mentioned. When the will was produced, the words "her heirs and assigns for ever" were found erased by a line struck through them in ink. *Held*, a valid obliteration under the Statute of Frauds (29 Car. II. c. 3 § 6), and the mother took a life-estate only.—*Swinton* v. *Bailey*, 4 App. Cas. 70; s. c. 1 Ex. D. 110.

GENERAL NOTES.

THE PROFESSION OF THE LAW.—Lord Bolingbroke was of opinion that "unless men prepare themselves for this profession by climbing what Lord Bacon calls the vantage grounds, law is scarce worthy a place among the learned professions: it degenerates into the practice of the grovelling arts of chicane."