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BUSINESS IN APPEAL.

The protest of Mr. Justice Ramsay which we published last week, with reference to the extra terms imposed by the local government on the Court of Queen's Bench, has naturally excited much comment. It is no doubt rather an unusual proceeding on the part of a judge to condemn, in the vigorous terms used by the learned judge, the supineness of a Government or rather a succession of Governments, which first turn a deaf ear to the reiterated suggestions made to them with the view of expediting the administration of justice, and then, the evil having been aggravated by delay, adopt the first expedient which suggests itself, heedless of the health and convenience of the judges, for such, in substance, is the complaint of the learned judge—but it is not the first time that it has occurred. We remember hearing something of the same kind from the late Mr. Justice Aylwin. See 3 L. C. Law Journal, pp. 97, 119.

From the main suggestion of Mr. Justice Ramsay, that the Court should not be burdened with forty or fifty arguments at a time without sufficient intervals being allowed for deliberation and judgment, we have heard no dissent anywhere. It is a proposition which commends itself to all, for the bar are well aware already that arguments at the end of a fatiguing term are often imperfectly appreciated and quickly forgotten. This has led to the practice, of late years, of making the printed cases much fuller than formerly, when merely the leading points were set out in the factum, and the full argument was reserved for the *viva voce* address.

As a matter of fact, the Court has been able to keep up with the current work; it has no arrears of *délibérés*, but it has been burdened by an arrearage in Montreal of about one hundred cases, dating back eight or nine years. The effect of this is that there is a delay in every instance of about a year between the inscription of a case and the judgment. This is a great evil, which should be remedied if possible. If the Court were once relieved of the Montreal arrears (there are no arrears at Quebec) the current business could be dispatched promptly. Mr. Justice Ramsay has suggested that the Court should sit almost continuously at Montreal, but three or four days only in each week, allowing the intervening days for deliberation. It is somewhat doubtful whether this would enable the Court to clear the list, but it is certainly more likely to effect that result than the expedient of extra terms. At any rate, it seems to us that the judges themselves should have even more power than is now accorded to them, of arranging the terms and sittings as they think best.

Various expedients have been adopted at times to deal with the difficulty of an overcrowded roll. In New York and Ohio, and probably in other states, the cases in arrears in certain courts have been transferred to a commission to be disposed of, and thus the Court has been enabled to take a fresh start. This would be preferable to a delay of a year in every case for the next ten or twenty years. It has also been suggested in the case of the Quebec Appeal Court, that the Court might sit in two divisions of three judges each, at Quebec and Montreal. This would get rid of the arrears, but there are two objections which occur at once. The Quebec division would have a very small share of the work, and the prestige of the court might be diminished by conflicting decisions. Probably both these objections might be overcome. To the Quebec division might be assigned additional country districts, or the judges of the Quebec division might occasionally assist in Montreal. And as to the second objection, there might be a provision allowing an appeal to the Supreme Court on special application in cases which are not now susceptible of appeal; or there might be a re-hearing in certain cases before the six judges.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 19, 1883.

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

HARVEY et al. (defts. below), Appellants, & O'SHAUGHNESSY et al. (plffs. below), Respondents.

Liquidation of Mutual Building Society—Distribution of surplus assets.

To facilitate the liquidation of a mutual building society a resolution was passed at a meeting of

the borrowing members, to discharge those who within three months should pay 80 per cent of their indebtedness, the surplus, after paying the non-borrowing members in full, to be divided among the borrowing members. Held, that those non-borrowing members who did not discharge the Society, were not bound by this arrangement, and were entitled to claim the surplus to the exclusion of the borrowing members who had all discharged the Society.

The appeal is from a judgment of the Superior Court, Torrance, J., reported in 5 Legal News, p. 429.

Ramsay, J. The proceedings began by a mandamus, asking the Court to forbid the liquidators of a building society in liquidation to pay over the balance of the funds to certain borrowing members, and to order them to pay certain surplus funds over to the shareholders who had discharged the company. The liquidators maintained that the borrowing members were alone entitled to these surplus funds. The judgment, considering that the assets should not be distributed as belonging to the borrowing members *alone*, overrules defendants' plea, and orders the liquidators within thirty days to distribute among the members of the said society and holders of stock therein *who are entitled to share in said distribution*, namely, who have not already released and discharged the society, and to pay over to them on a dividend sheet, &c., to be prepared, and reserves the power to adjudge on the other conclusions.

The effect of this judgment is to give the whole assets to the members who are not borrowing members, for it appears that all the borrowing members have released and discharged the society.

The only question, then, is whether the deeds of release are an acknowledgment by the borrowing members that they are to abandon all claim on the assets. I can hardly understand words more explicit of such an intention. The following is an extract from one of the deeds, and it is admitted that the others are similar in their terms:—

"And in consideration of the premises and of the discharge hereby granted him, the said Edward Booth, who at the passing of these presents has handed over and delivered to the Society his subscription book No. 58, as also ubscription book No. 320 of the said Society, hereby specially and expressly renounces to the rights or claims of any kind or nature whatsoever, which he might now or at any time claim to exercise against said society as having been a member thereof and holder of said subscription book or for any other cause or reason whatsoever, and does hereby renounce all rights as a member of said society and withdraw therefrom, and does hereby further specially and expressly grant full, final and entire discharge, release and acquittance from and concerning all rights, claims and demands which he has or can or might have or pretend against the said society by reason of his membership thereof, or his having been a holder of said subscription book, or for any other cause or reason whatever."

Is there any principle on which in a deed of this sort we should interpret the clause otherwise than in the naked sense of the language? I know none. There was no possibility of error. It was a transaction to get out of a difficulty. Each set of shareholders agreed to a settlement, and the borrowers got an equivalent for what they gave up. In any case there was no balance coming to them. Error is not even pleaded, so that these borrowing members who have got fully paid under their deed are holding on to the advantages so acquired, and at the same time ask us to relieve them of their discharge. It is said we are to do this on equitable grounds and that it is very unfair shutting them out, for by so doing we are in effect giving $3,000 to be divided among the eight remaining members of the Society. Equity is an excellent guide, but it is the equity of the law, not an emotional sentiment that somebody is getting too much. For my part I neither sorrow nor rejoice that the eight should get so much. It is the luck that falls to them for having stuck to their enterprise. They took all the trouble and ran all the risk, and however much or little that may be they are entitled to the surplus funds; for nothing is more certain than that the surplus funds of a company are not *res nullius*, but that they belong to the remaining members of the Society be they many or few. It was suggested to send back the case to the Court below, to allow other proceedings to be taken. But I don't see what is to be done; all the judgment says is that the members who have dis-

charged the Society will not be paid, and the majority of the Court think they ought not to be.

We are, therefore, to confirm with costs against appellants.

Cross, J. The St. Bridget's Building Society, whose affairs are in question in this suit, was a society organized under cap. 69 of the Consolidated Statutes for Lower Canada. It had two classes of members, having to some extent antagonistic interests, denominated in the factums of the parties borrowing members and non-borrowing members respectively.

The Society appears to have got into difficulties, and with a view to closing its business a meeting of its members was held on the 3rd of April, 1879, at which were discussed proposals for settling its affairs by the borrowing members anticipating the payment of their liabilities, which extended by instalments over a series of years, and getting a deduction in consideration of a present cash liquidation; on which conditions it was represented that the non-borrowing members would be satisfied to accept the proceeds on condition that they should get the actual amount invested by them without interest.

A special meeting of the borrowing members, with the same object, was held on the 2nd June, 1879. It appears by the minutes of these meetings, it was proposed that notarial documents should be prepared and signed, binding each class of shareholders to terms that would liquidate the affairs of the society, but these projects came to nothing, and were superseded by the proceedings of a meeting of the members of the society held on the 16th July, 1879, at which it was resolved that the society should go into liquidation under the provisions of the Dominion statute 42 Vic., c. 48.

At the same meeting the appellants were named liquidators.

These liquidators held a meeting on the 8th August, 1879, at which it was resolved that they should compound with the borrowing members at a certain amount of cash, according to the borrowing members' indebtedness, and that the board of liquidators would also take stock-books with the amounts therein as part payment of the borrowing members' indebtedness to the society at par value.

On the 11th of August following, the liquidators and the borrowing members held separate meetings. At that of the borrowing members, the minutes declare that it was for the purpose of hearing the conditions of the Board of Liquidators upon which they the borrowing members could get a clear discharge from the society. The President announced that the Board of Liquidators would take a certain amount of cash according to the face of each member's debt as shown in the ledger; some discussion ensued as to the rate of discount, when it was finally resolved that should there be any surplus after paying all the non-borrowers dollar for dollar, as that was all they wanted, it would be divided amongst the borrowing members, provided they would all pay up within three months, after which they would be charged interest.

The non-borrowing members were not represented at this meeting, unless they could be said to be so through the liquidators, in the person who acted as president of the meeting.

At the liquidators' meeting of the same date it was announced that a number of the borrowing members gave their names to go out in accordance with the proposition of the liquidators made to them. Upwards of thirty names are entered as so agreeing. This proposition may have been according to their meeting of the 8th of August, or it may have been what the President announced at the borrowing members' meeting of that day, the President so called being the former president of the directors and one of the liquidators.

The borrowing members seem to have liquidated their liabilities by paying 80 cents in the dollar of those liabilities, partly in cash and partly in the credits contained in books of the non-borrowing members taken at par, and in settling with the society, in place of reserving any right to participate in a surplus, they formally, by the same notarial documents which contained the discharge of their indebtedness, renounced specially and expressly, all rights and claims of any kind or nature whatsoever, which they might then or at any time claim to exercise against the Society as being members thereof, or for any cause whatever, granting the Society a most full and ample discharge. A specimen deed is produced, dated the 13th August, 1879, and the others are admitted to be to the same effect.

By these proceedings a surplus of between two and three thousand dollars was realized by the liquidators, who had obtained full discharges to the society from the members so compounding, and in consequence of the surrender of a great number of the books of the non-borrowing members, those remaining were reduced to a very small number. Under these circumstances the present respondents sued out a mandamus directed to the appellants as liquidators, requiring them to distribute the surplus among those who remained members of the society, consisting of the petitioners and some others of the non-borrowing members who had not discharged their interest or retired from the society. To this the appellants have pleaded that there was an agreement that the surplus should be divided among the borrowing members. This the petitioners deny, and allege that they never agreed to any such distribution, and it was not in the power of the liquidators to make such conditions, which raises the question: Had the liquidators by the winding up Acts 42 Vic., c. 48, 42 and 43 Vic., c. 32, and the Statute of Quebec 42 and 43 Vic., c. 33, power to compound? Was the exercise of that power as practised by them in this case *ultra vires?* There is nothing in the proceedings referred to, to show that the non-borrowing members were ever consulted or ever gave their consent to relinquish their claims to the surplus. The borrowing members, carrying with them the rights of many non-borrowing members, formally agreed to discharge the Society. These discharges are not impugned or complained of as being made in error, or subject to be set aside for any cause warranted by law, and were executed posterior to the pretended agreement. In such a matter non-borrowing members could not have their rights forfeited even by a resolution of a meeting of all the shareholders, nor without the specific consent of each, much less by a resolution of the borrowing members. The liquidators had power under the winding up Acts to compound with debtors of the Society, but they could not force creditors to diminish their demands.

A further still stronger reason is, that the liquidators were all borrowing members save one only, viz., Lunny, and he consented to the petition of the respondents.

It is true that another of their number was both a non-borrowing and a borrowing member, but even taking out his name it left the majority borrowing members. It was illegal for them to vote on such a question in their own favor, and the law would hold their votes a nullity. See Brice on Ultra Vires, p. 867, and the case of Atwool v. Merryweather, L. R. 5 Equity, p. 464.

If parties who have rights find they have been excluded, the judgment in the present case would not necessarily destroy their recourse. The appellants show no grievance, and as regards them the judgment should be confirmed.

DORION, C. J., and MONK, J., dissented.

Judgment confirmed.

Doutre & Joseph for appellants.

Doherty & Doherty for respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, March 24, 1883.

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

(No. 431) MOLSON (contestant below), Appellant, and CARTER (plaintiff below), Respondent.

(Nos. 432 & 433) HOLMES, Appellant, & CARTER, Respondent (two cases).

Will—Property declared insaisissable.

Where property was bequeathed with the condition that it should be unseizable, and was substituted to the children of the heirs, and the executors sold a portion to one of the heirs, held, that the effect was to make a partition, and the revenues of said property were unseizable.

The contestations arose in this way:—In 1875, the appellant, Alexander Molson, was desirous of effecting a loan for $30,000, and he offered as security certain property in St. James street, occupied by one Freeman as tenant. He applied, in the first instance, to the agent of the estate Masson, but the matter having been referred to the solicitors of the estate, the latter reported that the security was unsatisfactory, as, in their opinion, the property was entailed in favor of Molson's children. Shortly afterwards, Molson obtained the $30,000 from the respondent, represented by the Hon. J. J. C. Abbott, the security for the loan being the above mentioned property. Some time subsequent to

this, Molson being embarrassed and the interest not being paid, and Mr. Abbott being informed that the $30,000, which had been deposited in the Mechanics' Bank, had been withdrawn by Molson, the latter was arrested under a *capias* on the charge of secreting. The case was pending in the courts for several years, and was finally decided by a majority of the Court of Appeals against Molson, and judgment for the $30,000 was obtained against him by Mr. Carter, the respondent. It was upon the execution of this judgment that the present cases arose. A *saisie-arrêt* was issued, seizing rents of the property mortgaged, in the hands of the tenant, and also the dividends on certain shares in the Molsons Bank. The appellant Molson contested this seizure, and his wife intervened and also contested the seizure, both in her own name and as tutrix to her minor children. The Court below dismissed all three contestations, and it was from these judgments that the present appeals were instituted.

On the contestation by Molson in his own name, it was submitted on his behalf that the real estate and the bank stock in question were declared to be unseizable by the will of his father, the late John Molson, the intention being that they should be an aliment for the family. By the will referred to, executors were named, and these executors had undertaken, in 1871, to make a sale of the property to Mr. Alex. Molson personally, but his true title to the property was a *partage* of his father's estate, under the will, which declared the property to be *insaisissable*, and to be for the aliment of the son and his family. In behalf of Mrs. Molson, it was contended that she could not be made responsible for the act of Mr. Molson in mortgaging the St. James street property.

For the respondent it was submitted that the sale to Mr. Molson in 1871, and the other proceedings, had been carried out by the trustees for the purpose of conveying the property in question to the appellant, in his individual right, free of any charge or incumbrance by reason of the conditions of the will, and, in fact, the property did become vested in the appellant individually. There was nothing registered against it, and consequently the mortgage in favor of Mr. Carter, which was duly registered, became the first charge on the property, and under the judgment obtained thereon Mr. Carter was entitled to use all legal remedies for collecting his debt. At present only the rents and revenues were seized, and the rights pretended by Mrs. Molson under the will of the late John Molson were not affected by the seizure.

RAMSAY, J., who dissented in one case (No. 431) observed:

These three appeals all refer to one transaction. In execution of a judgment obtained by respondent against Molson, the dividend there might be on certain bank stock was seized, and also the rents due on a certain house the property of Molson.

The seizure is contested by Molson on the ground that the house, the rents of which are seized, and also the bank stock, forms part of the property he received from his father's estate, under the will of the father, by which the property bequeathed was not only substituted, but was declared *insaisissable*, both as to the capital and as to the interest and revenues thereof.

Mrs. Molson contests on the ground that she has an interest in this property, and consequently an interest to declare it *insaisissable*.

Thirdly, Mrs. Molson and her children raise the same question.

With regard to the Bank stocks, it is not shown that they represent any part of the property of the late John Molson's estate. They have not been kept separate, and are not distinguishable, or at least they have not been identified.

Then, as to the two last contestations as regards the revenues of the house, I don't think the intervening parties, appellants, have shown any interest. They might have an interest if the house itself was seized. But at the argument it was said that at any rate they had an interest, because if Molson required aliments they could be compelled to supply them. If this argument were tenable, all relatives subject to the possible obligation to furnish *aliments* to each other would have a right to intervene in the suits brought against any one of them for their own protection. This is evidently not the case, and I am of opinion that both these appeals should be dismissed.

The pretention of Molson is met on quite different ground. Respondent says, in the first place, that the house, the rent of which is seized, does not form part of the estate of the late

John Molson. That by the will of John Molson the executors, or the survivors of them, had power to sell all the real estate in order to make a division of the property, and that the proceeds of the sale should take the place of the original property; that they exercised this power, and executed deeds of sale to the various members of the family, and that the proceeds of these sales from that moment became the property substituted and declared *insaisissable*.

Respondent also contends that he lent to Molson his money, sought to be recovered by this execution, on the faith of a deed of sale duly enregistered, showing an unincumbered title in Molson; that, if Molson's title was bad, it was so to the knowledge of Molson, and that by showing him a clear deed he had obtained respondent's money by fraud; and that as no one can profit by, or plead his own fraud, the defence in the mouth of Molson is inadmissible. He contends also, that there is evidence that Molson had been advised by counsel before the money was paid to him by respondent, that his title was defective.

Appellant makes answer to this: that the sale was merely a *partage* clothed with the form of a deed of sale, that the real character of the transaction was apparent on the face of the deed, which refers to the will, and that as it required two executors to convey the title, and as Alex. Molson could not convey to himself, there remained only William Molson as vendor, and therefore respondent had full notice that the deed could not be the whole title, and that he had to look to the will. That, in fact, there was no misrepresentation; that respondent's lawyer, who treated in the matter of the loan, had been the appellant's lawyer in the matter of the *partage* under the will, and that he had been made aware at the time of the loan, of the opinion of counsel that the title was bad as a deed of sale, and was in effect only a *partage*.

It is maintained by the appellant that, even if there were fraud, there is a prescription of the law which exempts from seizure "sums of money or objects given or bequeathed upon the condition of their being exempt from seizure." (558 C. C. P.)

I do not think we are obliged in this case to enter into the first question, namely, whether the transactions by way of sale are only, in effect, a mode of making a *partage*, as between the heirs and their *ayants cause*. I may, however, observe *en passant*, that if the argument is sound, it seems hardly to go far enough, for if the executor, appellant, could not sell to himself he could not apportion to himself in any other way. The whole transaction, then, is null, if the sale be null as a sale. I may also express a doubt whether the sale by the executors to one of themselves is null *de plano*, and whether the executor who has made such sale can himself invoke its nullity. It may be questioned whether he has not had the full advantage of his father's bequest, and that the will is satisfied. If he has, his squandering his succession was evidently within his powers.

But, as I have said, I express no formal opinion on these questions, for I am strongly of the opinion that Molson obtained the money, if the deed be bad, by fraud, and that he cannot set this up. As for the provision of the C. C. P. referred to, it is only a general enumeration of things *insaisissables*, and in no wise is to be taken as a new enactment over-riding the common law. Now, I think the rule that no one can plead his own fraud is a fundamental principle of justice—one of those principles, which, whether expressed or not, must naturally be considered as untouched by particular rules. The texts of law which recognize this principle are numerous and well known—"no one can enrich himself at the expense of his neighbour," "no one can profit by his fraud," and so forth. Nor on general principle can fraud be covered by the protection given to special persons. Thus a woman is protected against her weakness, not against her fraud. And so we have the well-known rule, *mulieribus tunc succurrendum est, cum defendantur, non ut facilius calumnienter*. De Reg. jur., 110. And so the wife had not the benefit of the *Senatusconsultus Velleianum* when she took a part in the fraud. Several instances in illustration of this principle are given in the code. And to the rule I know no exception, save when the fraud is in violation of a law of public order. The law which permits a donor to attach the condition he chooses, which is not against good morals, and hence to declare that the thing given is for aliments, and is *insaisissable*, does not fall into this category. And this suggests another idea, and it is, that if the restriction of the donor was to

cover the frauds of the donee, it would be immoral, at all events in its effects, and consequently opposed to the spirit of art. 760.

Yet another argument has been used. It is said that the deed of loan and hypothec and alleged fraud are not in question now, that the rents of the house were not hypothecated to Carter, that when returned into Court they will be subject to the claims of all creditors who have not been defrauded, and consequently Carter, who has been defrauded, must suffer. This is a strange conclusion. Carter says this: these revenues are the product of what you have hypothecated to me, and if I am not protected in the revenues of the thing my security is illusory. I think the rule, that the accessory follows the principal, applies here. Besides, it can hardly be said that this was the real ground of contestation. The whole argument was, that there was no fraud, and that the property was *insaisissable*. I do not think, then, that we can escape from the responsibility of deciding one or both of the questions. For my part, I have no hesitation in saying that there was fraud on the part of Molson, and that he is estopped from pleading it. *Dolo suo non debet quis lucrari, neque alii nocere*, 92, *in fin. C. de Transactionibus*, l. 30. Even if the evidence as to Mr. Dorion's opinion were to disappear, Molson was presumed to know the title he was giving.

The judgment of the Court was as follows:

"The Court, etc.

"Considering that by his last will bearing date the 20th of April, 1860, the late John Molson, after making several special bequests, devised and bequeathed the residue of his estate to William Molson his brother, Mary Ann Elizabeth Molson his wife, and Alexander Molson his youngest son, to hold, administer and manage the said residue for a period of ten years from his decease, with power to two of them, of whom William Molson while living should be one, to sell such part of his real estate as was not specially devised, and after the expiration of the ten years to divide the said residue or the proceeds thereof, between his five sons, in equal shares, to be enjoyed by them for their respective lives only, and after the decease of any of them, his share to become for ever the property of his lawful issue subject to the usufruct thereof on the part of the wife, if living, of such son so long as she might remain a widow;

"And considering that by his said will the said John Molson specially directed and ordained as an essential condition of the said bequests in favor of his five sons and of their widows respectively, that all the estate, interest and property, and all interest, revenue or income to arise therefrom should remain forever exempt from all liability for the debts, present or future, of them or any of them, and should be absolutely exempt from seizure (*insaisissables*) for any such debts or any other causes whatsoever, and should be held as a *legs d'aliments* not susceptible of being by them assigned or otherwise aliened for any purpose or cause whatsoever;

"And considering that the said John Molson died on the 12th of July, 1860, without altering his said will;

"And considering that on the 15th of June, 1871, the said William Molson and Alexander Molson acting as executors and trustees of the estate of the late John Molson, by deed passed before Phillips, notary public, sold to the said Alexander Molson a lot of land on St. James street of the city of Montreal, being No. 185 on the cadastral plan of the west ward of the said city belonging to the said estate, for the sum of $30,779.52, which sum has been included in the share of the purchaser in the distribution of the estate and effects of the said late John Molson executed on the same day and before the same notary;

"And considering that under the judgment rendered in this cause on the 17th of April 1878, the respondent has caused to be attached in the hands of Allan Freeman the rents due by him to the said Appellant on the lease of the said immoveable property lot No. 188 of the west ward of the city of Montreal, and also the dividends accrued and accruing on 148 shares of the capital stock of the Molsons Bank;

"And considering that the said appellant has contested the said attachment on the ground that the said immoveable property and the said 148 shares of the Molsons Bank stock were part and portion of the property bequeathed to him by his father, the late John Molson, by his said will, and as such as well as the rents, issues and profits thereof, were not liable to be

seized, attached or sold for the debts of him, the said appellant, they being by the said will declared to be *inaliénables et insaisissables* and bequeathed *à titre d'aliments ;*

"And considering that the said respondent by his answers to the said contestation, contends that the said 148 shares in the capital stock of the Molsons Bank did not form part of the estate of the late John Molson and were not therefore subject to the condition of *insaisissabilité* imposed by the will of the late John Molson, and the said lot of land No. 185 of the cadastral plan of the west ward of the city of Montreal has ceased to be subject to the said condition by virtue of the sale of the said lot of land by the deed of the 15th of June, 1871, whereby the said lot of land became the absolute property of the said appellant, and ceased to form part of the property composing the estate of the said late John Molson ;

"And considering as regards the said 148 shares in the capital stock of the Molsons Bank, that although it appears by the evidence that the late John Molson was possessed at the time of his death of 3,200 shares in the capital stock of the Molsons Bank, of the value of $160,000, yet it does not appear that by the division of the estate any portion of the said stock was allotted to the share of the said appellant, nor that the said 148 shares ever formed part of those belonging to the estate of the late John Molson, and that therefore the said 148 shares in the Molsons Bank are not subject to the said condition of *insaisissabilité* mentioned in the testator's will, and the contestation of the said appellant is unfounded in respect of said shares ;

"And considering that as regards the said lot of land No. 185 of the cadastral plan of the west ward of the city of Montreal, the sale made on the 15th of June, 1871, must be taken in connection with the *partage* of the estate of the late John Molson passed on the same day, and must be considered under the provisions of Art. 747 of the Civil Code as part and portion of the *partage* of the estate of the late John Molson, and that the said lot of land has not ceased to form part of that portion of the real estate of the estate of the said late John Molson which was allotted to the said appellant by the said *partage ;*

"And considering that the rents of the said lot of land are, under the provision of the will of the said late John Molson and by virtue of Articles 558-632 of the Code of Civil Procedure, exempt from seizure (*insaisissables*) ;

"And considering that the appellant is by law authorized to invoke the nullity of the seizure made in this cause of the rents of the said lot of land ;

"And considering that it is unnecessary for the determination of the present contestation to enter into the examination of the other questions raised by the pleadings, and that there is error in that part of the judgment rendered by the Superior Court on the 30th of June 1881, in dismissing the contestation of the said appellant as regards the seizure in the hands of the said Allan Freeman of the rents of the said lot of land ;

"This Court reforming the said judgment of the 30th of June 1881, doth reject the contestation of the said appellant of the attachment made in the Molsons Bank as regards the 148 shares in the capital stock of the said bank by the said appellant held in the name of "*Alexander Molson in trust for A. A. M. et al.,*" and doth declare the *saisie-arrêt*, attachment made by the respondent in the hands of the Molsons Bank of the dividends accrued or to accrue on the said shares good and valid, and doth upon to declare what sums are or will become due to the appellant on the said shares ;

"And this Court doth maintain the contestation of the said appellant of the attachment made by the said respondent in the hands of the said Allan Freeman of the rents accrued and to accrue on the lease of the said lot of land No. 185, of the West ward of the city of Montreal, doth quash the said attachment, and doth grant *main levée* thereof ;

"And the Court doth condemn the appellant to pay to the respondent the costs incurred in the Court below on the attachment made in the hands of the Molsons Bank, and doth condemn the said respondent to pay to the appellant the costs incurred on the attachment in the hands of the said Allan Freeman and of the contestation thereof, as well as the costs on the present appeal."

In Nos. 432 and 433 the judgment was confirmed (Monk, J., dissenting), on the ground that appellant had not shown any interest in the sums of money attached in the cause. *

Barnard, Beauchamp & Creighton for Appellant.

Abbott, Tait & Abbotts for Respondent.

S. Bethune, Q.C., and *Pagnuelo, Q.C.*, counsel for respondent.

* An appeal is pending before the Privy Council.