

In the Privy Council.

No. 36 of 1894.

UNIVERSITY OF LONDON

11 OCT 1956

INSTITUTE OF ADVANCED  
LEGAL STUDIES

ON APPEAL FROM THE  
COURT OF QUEEN'S BENCH FOR LOWER CANADA.

BETWEEN

GEORGE W. SIMPSON, *ès-qual.*, ALEXANDER  
MOLSON and HERBERT S. S. MOLSON - *Appellants,*

AND

THE MOLSONS BANK - *Respondents.*

RECORD OF PROCEEDINGS.

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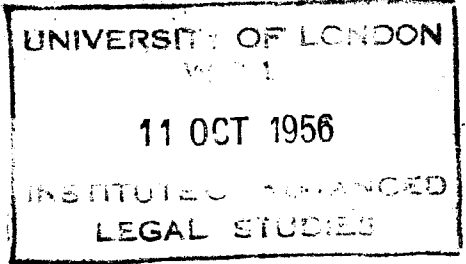
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In the Privy Council.  
No. 36 of 1894.

ON APPEAL FROM THE  
COURT OF QUEEN'S BENCH FOR LOWER CANADA.

BETWEEN  
GEORGE W. SIMPSON, *ès-qual.*, ALEXANDER  
MOLSON and HERBERT S. S. MOLSON - *Appellants*,  
AND  
THE MOLSONS BANK - - - - *Respondents*.

RECORD OF PROCEEDINGS.

IN THE COURT OF QUEEN'S BENCH.

RECORD.

Transcript of Record and Proceedings in the Courts of the Province of Quebec,  
appealed from in a cause

Between

A. B. Stewart, *et al.* - - - (Plaintiffs)  
and  
George W. Simpson, *ès-qual.*, *et al.*, Plaintiffs *par reprise*  
*d'instance* - - - - - } Appellants,

versus

The Molsons Bank - - - (Defendants) Respondents.  
Canada. Province of Quebec.

In the Court of Queen's Bench for the Province of Quebec.

(Appeal Side.)

Transcript of all the Rules Orders and Proceedings found in the Record  
and Register of Her Majesty's Court of Queen's Bench for the Province of  
Quebec (Appeal Side) in the matter lately pending between Andrew B.  
Stewart in his quality of Curator to the Substitution created by the last will  
p. 3716. A

**RECORD.** of the late Hon. John Molson for the share of the said Hon. Molson's estate of which Alexander Molson one of the sons of the said Hon. John Molson is Institute the said Alexander Molson in his quality of Institute as aforesaid and Herbert S. S. Molson one of the substitutes comprised in the said substitution Plaintiffs and Molsons Bank Defendant and George W. Simpson in his quality of curator appointed to said substitution in the place and stead of the late Andrew B. Stewart Plaintiff *par reprise d'instance* said record transmitted to the Court of Queen's Bench upon the Appeal Side thereof in virtue of an inscription filed by the said George W. Simpson *ès-qual. et al.* and to be transmitted to Her Majesty in Her Privy Council on the appeal of the said George W. Simpson *ès-qual. et al.* 19

No. 1.  
Inscription  
in Appeal  
and Notice,  
dated 17th  
Oct. 1892.

Document I.

Canada. Province of Quebec, District of Montreal.

In the Court of Queen's Bench.

(Appeal Side.)

Andrew B. Stewart, of the City and District of Montreal, Accountant in his quality of Curator, duly appointed to the substitution created by the last Will of the late Hon. John Molson, in his lifetime of Montreal aforesaid, for the share of the said Hon. John Molson's estate, of which Alexander Molson, one of the sons of the said Hon. John Molson, is Institute, the said Alexander Molson, of Montreal aforesaid, gentleman, in his quality of Institute as aforesaid, and Herbert S. S. Molson, of Montreal aforesaid, one of the substitutes comprised in the said substitution (Plaintiffs in the Court below), and George W. Simpson, of the City and District of Montreal, stock-broker, in his quality of Curator to the said substitution created by the last Will of the said Hon. John Molson duly authorized to appeal this case (Plaintiff *par reprise d'instance* in the Court below) - - Appellants, 20

*versus*

The Molsons Bank, a body politic and corporate, having its chief office and place of business in the City and District of Montreal (Defendants in the Court below) Respondents. 30

We appear for Appellants and inscribe this cause in appeal to the Court of Queen's Bench from the final judgment rendered by the Superior Court on the sixth day of October instant and will give good and sufficient security as required by law on Thursday the twentieth day of October instant before a Judge of the Superior Court or the Prothonotary thereof in his office at eleven 40



o'clock of the forenoon and that the surety to be offered is Alfred Joyce merchant of the city and district of Montreal who will then and there give security and will justify on lot cadastral No. 1263 of St. Antoine Ward in the city of Montreal if required.

Montreal, 17 Oct. 1892.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Appellants.

RECORD.  
—  
No. 1.  
Inscription  
in Appeal  
and Notice,  
dated 17th  
Oct. 1892—  
*continued.*

To Messrs. Abbotts, Campbell, and Meredith,  
Attorneys for Respondents.

40 Gentlemen,

Take notice of the foregoing inscription and declaration filed this day in the Prothonotary's office and that Appellants will give security at the place and time therein stated.

Montreal, 17 Oct. 1892.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Appellants.

(On the back.) I the undersigned one of the sworn bailiffs of Her Majesty's Court of Queen's Bench (Appeal Side) appointed and acting in and for the district of Montreal residing in the city of Montreal hereby certify  
20 and return under my oath of office that I did on the seventeenth day of October eighteen hundred and ninety-two between the hours of four and five of the clock in the afternoon serve the within original inscription of notice on the within-named Respondent's attorneys by speaking to and leaving true and certified copies thereof with a grown and reasonable person in care of and at their office in the said city of Montreal. The distance from the Court House in the city of Montreal to said place of service is less than one mile and from my residence to place of service is one mile.

Montreal, 17 October 1892.

(Sig.) SAM. C. MARSON, B. Q. B.

30

Record received, Appeal Office, Montreal, 8 Nov. 1892.

Paraphed, L. O., Dep. C. A.

(Endorsed) Inscription and Notice.

Filed 18 Oct. 1892.

(Paraphed) E. D., Dep. P. S. C.

RECORD.

## Document II.

District of Montreal.

No. 2.  
Copy of  
Authori-  
sation to G.  
W. Simpson  
in his  
quality of  
Curator, to  
the sub-  
stitution  
Molson for  
the share of  
Alexander  
Molson as  
Institute,  
dated 17th  
Oct. 1892.

Be it remembered that on the seventeenth day of October one thousand eight hundred and ninety-two personally came and appeared before us the Honourable Charles C. Delorimier one of the Judges of the Superior Court for Lower Canada in the district of Montreal George W. Simpson of the city of Montreal broker in his quality of curator to the substitution created under the will of the late Honourable John Molson affecting the share of Alexander Molson in said estate (by A. Falconer, Esquire, Advocate, his attorney)

Who by virtue of the fiat upon the petition presented to us this day for the purpose of authorising the said petitioner *es-qualité* to institute an appeal from a judgment rendered on the sixth of October instant in the said Superior Court in an action bearing No. 373 of the records of the said Superior Court hath caused to be cited before us a competent number of the friends in default of relatives of said substitution viz. :—

Alfred Joyce merchant William Oliver Smith gentleman Athanase Branchaud Q.C. William Robb City Treasurer James C. Wilson manufacturer Bernard Tansey merchant Hugh Brodie notary all of the city of Montreal and all friends of the said substitution.

Who having heard the said petition read and being duly sworn to give their advice on the premises unanimously say that they are of opinion that the said petition and the conclusions of the said petition be granted.

And they have signed.

(Signed)

A. JOYCE.

WILLIAM OLIVER SMITH.

W. ROBB.

J. C. WILSON.

B. TANSEY.

H. BRODIE.

A. BRANCHAUD.

30

Whereupon the said advice is by us the said Judge ratified and confirmed and it is ordered in consequence that the said George W. Simpson in his aforesaid quality of curator to the said substitution be and remain authorised to institute the said appeal from the said judgment and to prosecute the same to judgment.

(Signed)

CHAS. C. DE LORIMIER, J. S. C.

Certified to be a true copy of the original remaining of record in the office of the Prothonotary of the said Superior Court in and for the said district of Montreal.

(Signed)

J. E. CHAMPOUX, Deputy P. S. C.

40

(Endorsed) The 17th October 1892. Substitution John Molson authorised to appeal. Copy.

Filed 18th October 1892.

(Paraphed) E. D., Dep. P. S. C.

## PROCEEDINGS IN THE SUPERIOR COURT.

RECORD.

No. 3.

Summary of  
Proceedings  
in the  
Superior  
Court from  
1st Feb.  
1890 to  
17th Feb.  
1892.

The 1st February 1890.

Messrs. Robertson Fleet and Falconer appear for the said Plaintiff and require a Writ of Summons against said Defendants.

A Writ of Summons is issued accordingly against the said Defendants said Writ made returnable on the 17th February instant.

The 17th February 1890.

10 Sam. C. Marson one of the bailiffs of this Court returns the Writ of Summons in this cause with the declaration thereto annexed and a certificate of service.

The Plaintiff files list of exhibits with the return of the action.

Messrs. Abbotts Campbell and Meredith appear for the said Defendants and give notice thereof to Plaintiff.

The 21st February 1890.

The said Defendants file Dilatory Exception and Exception à la Forme deposit \$16 and give notice thereof to Plaintiff.

The 8th March 1891.

The Plaintiff files list of Exhibits No. 1, 2, 3, 4, 5, 6, 7.

The Plaintiff files notice to Defendants of the production of exhibits.

20 The 14th March 1890.

The Plaintiff files answers to Defendants' Dilatory Exception and Exception à la Forme with a certificate of service.

The 28th March 1890.

The Plaintiff files Inscription for hearing upon the Dilatory Exception on the first of April next with a certificate of service upon Defendants.

The Plaintiff files Inscription for final hearing upon Exception à la Forme for the first April next Defendants having been served with copy of said Inscription.

The 11th April 1890.

30 The parties file admissions that only one of the substitutes comprised in the substitution is a party to the present action and that there are other substitutes living who are of the full age of majority and who are not parties to the present action.

## RECORD.

No. 3.  
Summary of  
Proceedings  
in the  
Superior  
Court from  
1st Feb.  
1890 to  
17th Feb.  
1892—con-  
tinued.

The 11th April 1890.

At the hearing upon the Dilatory Exception and Exception à la Forme.

Present: The Honourable Mr. Justice Mathieu.

*P. o. C. a. v.*

The 2nd May 1890.

Present: The Honourable Mr. Justice Mathieu.

La Cour après avoir entendu les parties par leurs avocats sur le mérite de l'Exception Dilatoire produite par la Défenderesse avoir examiné la procédure et délibéré :

Attendu que le Défenderesse allègue dans son Exception Dilatoire que 10 les Demandeurs n'ont pas produit avec leur demande les preuves littérales invoquées au soutien de cette demande et demande à ce qu'elle ne soit pas tenue de plaider avant que les dites pièces ne soient produites :

Attendu que les dits Demandeurs ont répondu à cette Exception Dilatoire que depuis la production d'icelle ils avaient produit les pièces au soutien de leur demande et que la Défenderesse n'avait pas le droit de produire une Exception Dilatoire basée sur ces moyens vu que par la loi elle n'était pas tenue de plaider avant que ces pièces ne fussent produites :

Considérant que par l'Article 120 du Code de Procédure Civile la partie assignée peut par Exception Dilatoire arrêter la poursuite de la demande 20 s'il y a lieu d'exiger des Demandeurs l'exécution de quelque obligation préjudicielle :

Considérant qu'il est bien vrai que par l'Article 103 du Code de Procédure Civile il est décrété que jusqu'à ce que les pièces aient été produites le Demandeur ne peut procéder sur sa demande mais que cette disposition de la loi donne à la Défenderesse un droit qu'elle peut invoquer par Exception Dilatoire :

Considérant que la dite exception lorsqu'elle a été produite était bien fondée mais que par la production des pièces elle devient sans effet :

A renvoyé et renvoie la dite Exception Dilatoire mais condamne les 30 Demandeurs aux dépens distraits à Maitres Abbotts Campbell et Meredith Avocats de la Défenderesse.

Le 2 Mai 1890.

Present: L'Honorable M. le Juge Mathieu.

La Cour après avoir entendu les parties par leurs avocats sur le mérite de l'Exception à la Forme produite par la Défenderesse avoir examiné la procédure et les pièces produites et délibéré :

Attendu que les Demandeurs savoir Andrew B. Stewart en sa qualité de curateur à la substitution créée par le testament de feu l'Honorable John Molson pour la part de la succession de ce dernier dont Alexander Molson 40 est grevé de substitution le dit Alexander Molson en sa qualité de grevé de substitution et Herbert S. S. Molson l'un des appelés à la dite

substitution poursuivent la Banque Molson alléguant en substance que le ou vers le cinq Avril 1871 William Molson et Alexander Molson deux des exécuteurs nommées par le dit testament transportèrent au dit Alexander Molson personnellement 640 actions dans la dite banque pour la dite part de la dite succession dont le dit Alexander Molson est grevé de substitution sans spécifier que tel transport était fait en vertu du dit testament et sujet à ses provisions qui établissent que les dites actions sont inaliénables et insaisissables comme biens substitués et que ce transport est en conséquence irrégulier et illégal et concluant les dits Demandeurs à ce que la Défenderesse soit

10 condamnée à mettre livrer et transporter au nom du dit Demandeur Alexander Molson comme grevé de la dite substitution les dites 640 actions de la dite Banque ou à payer aux Demandeurs la somme de \$60,000. 00 et à ce qu'elle soit aussi condamnée à leur payer \$70,000. 00 pour les dividendes sur les dites actions :

Attendu que la Défenderesse a produit une Exception à la Forme alléguant qu'il y a plusieurs appelés à cette substitution qui ne sont pas en cause que les Demandeurs n'ont pas droit de se joindre dans une même poursuite comme ils l'ont fait vu que leurs intérêts ne sont pas les mêmes que le dit Alexander Molson ayant disposé de ces actions la substitution n'a pas droit de les réclamer

20 de son vivant vu qu'il n'a pas été privé de sa jouissance des dites actions et que ses intérêts sont différents et même opposés à ceux des autres Demandeurs que les allégations et les conclusions de la dite déclaration sont vagues et insuffisantes en autant qu'elles ne déclarent point combien de dividendes ou réclame pour Alexander Molson et combien pour Stewart ou Herbert S. S. Molson que la Défenderesse ne peut pas plaider à cette action vu qu'elle a des moyens de défense distincts pour chacun des Demandeurs et conclut à ce qu'il soit déclaré que les Demandeurs se sont illégalement joints dans une même poursuite et à ce que l'action soit renvoyée :

30 Considérant que les Demandeurs par leur déclaration demandent que le Défenderesse soit tenue de remettre au nom d'Alexander Molson pour la substitution des dites 640 actions de la dite Banque et de payer au dit Alexander Molson aussi pour la dite substitution les dividendes provenant de ses actions :

Considérant que par la dite déclaration les deux demandes pour le capital des dites actions et pour les dividendes sont faites au nom de la substitution et qu'elles sont identiques suivant les prétentions des Demandeurs :

Considérant qu'il n'y a pas lieu de décider sur l'Exception à la Forme si les dividendes appartiennent à la substitution aussi bien que le capital mais qu'il suffit de constater que ce sont là les prétentions des Demandeurs :

40 Considérant que ces deux demandes telles que faites sont identiques procèdent des mêmes actes et des mêmes faits et que leur reunion ne paraît pas irrégulière :

Considérant que la dite déclaration n'est pas vague comme le prétend la Défenderesse :

Considérant que lorsque toutes les parties intéressées au procès ne sont pas en cause la Défenderesse ne peut s'en prévaloir par Exception à la Forme mais bien par une Exception Dilatoire sous l'article 120 du Code de Procédure Civile :

RECORD.

No. 3.

Summary of  
Proceedings  
in the  
Superior  
Court from  
1st Feb.  
1890 to  
17th Feb.  
1892—con-  
tinued.

RECORD.

No. 3.  
Summary of  
Proceedings  
in the  
Superior  
Court from  
1st Feb.  
1890 to  
17th Feb.  
1892—con-  
tinued.

Considérant que la dite Exception à la Forme est mal fondée :  
A renvoyé et renvoie la dite Exception à la Forme avec dépens distrait  
à Maitres Robertson Fleet et Falconer Avocats des Demandeurs.

The 8th May 1890.

The Plaintiffs demand a plea to the present action.

The 24th June 1890.

The Defendants file Preremptory Exception and Pleas to the present action  
Plaintiffs having received copy thereof.

The 7th October 1890.

The Plaintiffs file answer to Defendants' Pleas said Defendants having 10  
received copy thereof.

The 17th October 1890.

The Defendants file replication to Plaintiffs' answer to Pleas Plaintiffs  
having received copy thereof.

The 5th December 1890.

The Plaintiffs file their articulations of facts with notice to Defendants.

The Defendants file answers to Plaintiffs' articulations of facts with notice  
thereof to said Plaintiffs.

The Defendants file their articulations of facts Plaintiffs having received  
copy thereof. 20

The Plaintiffs file answers to Defendants' articulations of facts with notice  
thereof to Defendants.

The 12th January 1891.

G. W. Simpson by his Attorneys Messrs. Robertson Fleet and Falconer  
presents a petition demanding for the reasons alleged in said petition to  
be allowed to take up the instance herein in the place and stead of the  
late A. B. Stewart files list and Exhibit No. 1 in support of said petition  
Defendants having received copy of said petition, &c.

In Chambers.

Present: The Honourable Mr. Justice Mathieu. 30

*F.O.*

Having heard the petitioner by his Counsel upon his petition en reprise  
d'instance filed examined the proceedings and proof of record.

Seeing that A. B. Stewart one of the Plaintiffs in his quality of curator to  
the substitution created by the last will and testament of the late Honourable

John Molson died on the 19th December last and that on the twenty-second December last the petitioner was duly appointed curator to said substitution in the place of the said late A. B. Stewart.

I the undersigned Judge do grant the said petition and I do authorise the said petitioner in his said quality to take up the instance in this cause and to continue the same in the place and stead of the said late A. B. Stewart costs reserved.

RECORD.

No. 3.  
Summary of  
Proceedings  
in the  
Superior  
Court from  
1st Feb.  
1890 to  
17th Feb.  
1892—*con-  
tinued.*

The 3rd February 1891.

The Plaintiffs inscribe the present cause for enquête and merits and give  
10 notice thereof to Defendants.

The 18th January 1892.

The Plaintiffs re-inscribe the present cause for enquête and merits for the 26th January instant with the consent of Defendants.

The 23rd January 1892.

The Defendants file notice to Plaintiffs to produce at the trial all books papers and documents relating to any of the matters in this cause.

The parties file consent that this cause be heard at enquête and merits before Mr. Justice Taschereau on the 26th of January 1892.

The 26th January 1892.

20 At Enquête and Merits.

Present : The Honourable Mr. Justice Taschereau.

Chas. de B. McDonald sworn as stenographer.

John Low sworn and examined by Plaintiffs.

Plaintiffs file Exhibit No. 1.

W. G. Fenwick sworn and examined by Plaintiffs.

Plaintiffs file Exhibit No. 2.

James Elliot sworn and examined by Plaintiffs.

Plaintiffs file Exhibits Nos. 3, 4, 5, 6, 7, 8, 9, 10.

Continued to the 27th instant.

30 The 27th January 1892.

Wolferstan Thomas sworn and examined by Plaintiffs.

William Robb " "

J. Elliot recalled " "

G. W. Simpson " "

Alex. Molson " "

E. W. H. Phillips " "

p. 3716. B

RECORD.

No. 3.

Summary of  
Proceedings  
in the  
Superior  
Court from  
1st Feb.  
1890 to  
17th Feb.  
1892—con-  
tinued.

Plaintiffs declare their enquête closed.

Continued to the 28th instant.

G. W. Simpson sworn and examined by Defendants.

Defendants declare their enquête closed sauf to re-examine J. D. Molson

*P.o. C.a.v.*

The 28th January 1892.

The Plaintiffs file declaration that they withdraw the allegations contained in the 4th paragraph of the 5th page of their declaration beginning with the words "that moreover at date," etc., and make motion that actes be granted them of said declaration Defendants having received copy of said declaration and motion. 10

Present : The Honourable Mr. Justice Taschereau.

Motion granted, costs reserved.

The 17th February 1892.

The Plaintiffs file list and Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 at enquête.

The Defendants file list and Exhibits Nos. 1, 2, 3 at enquête.

The Plaintiffs file the depositions of John Law William J. Fenwick James Elliot F. W. Thomas, William Robb Geo. W. Simpson Alex. Molson Edward W. H. Phillips and Jos. D. Molson. 20

The Defendants file the depositions of Edmund Barry G. W. Simpson and E. W. H. Phillips.

No. 3A.  
Judgment of  
the Superior  
Court,  
rendered 6th  
Oct. 1892.

The sixth day of October one thousand eight hundred and ninety-two.

Present : The Honourable Mr. Justice Taschereau.

La Cour ayant entendu les parties par leurs procureurs respectifs sur le mérite de la présente cause examiné la procédure les admissions et toutes les pièces du dossier entendu aussi les témoins interrogés Cour tenante et sur le tout délibéré :

Considérant que le testament de l'Honorable John Molson en question en cette cause est en date du vingt Avril 1860 et a été fait à Montreal où le dit testateur est décédé le 12 Juillet de la même année : 30

Considérant que par la loi alors en force en cette province (Art. 125 de l'Ordonnance de 1629) les substitutions de meubles et d'effets mobiliers étaient absolument prohibées que quoique les dispositions de cette Ordonnance aient été modifiées en France par l'Ordonnance de 1747 sur les substitutions cette dernière Ordonnance n'a jamais été enregistrée au Conseil Supérieur de Québec et conséquemment n'a jamais eu force de loi dans ce pays et n'a jamais appelé



la prohibition de l'Ordonnance de 1629 laquelle est demeurée en force jusqu'à la promulgation du Code Civil le 1er Août 1866 (XI. L.C.R. Blanchet *v.* Blanchet ; Remarques du Juge en Chef Sir L. H. Lafontaine p. 220 12 R. L. Joubert *v.* Walsh p. 350 ; Hutchison *v.* Gillespie 4 Moore P. C. 378 Symes *v.* Cuvillier 5 L. R. H. L. and P. C. 138) :

Considérant qu'ainsi ni l'Ordonnance de 1747 ni l'Article 931 du C. C. ne sont applicables dans l'espèce de la substitution dont il s'agit en la présent cause :

Considérant que l'Article 838 du C. C. en edictant que " dans les legs  
 10 " dont l'effet demeure suspendu après le décès du testateur soit par suite d'une  
 " condition soit dans le cas de legs à des enfants à naitre ou dans les cas de  
 " substitution la capacité de recevoir par testament se considère au temps où  
 " le droit est ouvert " énonce une règle de droit antérieure à la promulgation  
 du Code mais qui n'a trait qu'à la capacité personnelle du légataire ou de  
 l'appelé de recevoir un legs d'ailleurs permis par la loi et non au droit lui-  
 même que peut avoir le testateur de disposer ou non d'une classe de biens  
 dont la loi lui défend la substitution au temps du testament qu'à l'égard de ce  
 droit du testateur et de cette prohibition qui le concerne c'est à l'époque de  
 son testament qu'il faut se reporter suivant l'Art. 835 du C. C. et que dans  
 20 l'espèce la prohibition susdite existait lors du testament et empêchait absolument  
 le testateur de créer une substitution à l'égard de ses biens meubles :

Considérant que les arrêts de Hamilton *v.* Plenderleath (2 R. de L. p. 1)  
 et de King *v.* Tonstall (14 Jurist p. 197 et 20 Jurist p. 49) en consacrant la  
 doctrine énoncée dans l'Art. 838 du Code Civile n'ont pas violé celle de  
 l'Art. 835 qui est la seule applicable à la cause actuelle et que ces précédents  
 ne sauraient être invoqués par la demande :

Considérant qu'en vertu de l'Art. 387 du C. C. et du droit antérieur au  
 dit Code les parts ou actions de banques en question en cette cause et pré-  
 tendues substituées par le testament susdit étaient et sont meubles par la  
 30 détermination de la loi et ne pouvant faire l'objet d'une substitution :

Considérant que la substitution prétendue représentée par les Demandeurs  
 et par le reprenant l'instance en cette cause n'a en conséquence aucun droit  
 présent on éventuel à revendiquer ou à protéger au moyen de la présente action  
 sur les parts de banque mentionnées dans la déclaration :

Considérant qu'à ce point de vue il devient inutile d'entrer dans l'examen  
 des autres questions soulevées par les parties au cours de la procédure et du  
 litige :

Maintient la defence et renvoie l'action avec dépens distraits à Messrs.  
 Abbotts Campbell and Meredith procureurs de la Banque Défenderesse sans  
 40 les frais déjà adjugés durant l'instance.

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The 18th October 1892.

G. W. Simpson files copy of authorisation to appeal from the final  
 judgment in this cause.

B 2

RECORD.  
 —  
 No. 3A.  
 Judgment of  
 the Superior  
 Court,  
 rendered 6th  
 Oct. 1892—  
*continued.*

No. 3B.  
 Summary of  
 Proceedings,  
 18th Oct.  
 to 20th Oct.  
 1892.

RECORD.

The 18th October 1892.

No. 3B.  
Summary of  
Proceedings,  
18th Oct.  
to 20th Oct.  
1892—  
*continued.*

The said Plaintiff par reprise d'instance files an Inscription in appeal of the foregoing final judgment rendered in this cause with notice that security will be given on said appeal.

The 20th October 1892.

The said Appellant *ès-qual.* gives the security required on said appeal (Alfred Joyce becomes surety).

Montreal, 28 October 1892.

E. DEMARAIS, Dep. P.

No. 4.  
Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890.

Schedule No. 1.

Province of Quebec, District of Montreal, Superior Court  
for Lower Canada.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, to any of the Bailiffs of the said Superior Court acting in the District of Montreal, greeting.

We command you to summon the Molsons Bank a body politic and corporate having its chief office and place of business in the City and District of Montreal to be and appear before Our said Superior Court in the Court House in the City and District of Montreal on the seventeenth day of February 20 instant or the next following juridical day to answer the demand of Andrew B. Stewart of the City and District of Montreal accountant in his quality of curator duly appointed to the substitution created by the last will of the late Honourable John Molson in his lifetime of Montreal aforesaid for the share of the said Honourable John Molson's estate of which Alexander Molson one of the sons of the said Honourable John Molson is Institute the said Alexander Molson of Montreal aforesaid gentleman in his quality of Institute as aforesaid and Herbert S. S. Molson of Montreal aforesaid one of the substitute comprised in the said substitution contained in the hereto annexed declaration.

And have there and then or before this writ and your proceedings 30 thereon.

In witness whereof we have caused the seal of said Court to be hereunto affixed at Montreal this first day of February in the year of our Lord one thousand eight hundred and ninety.

(i. s.)

(Signed) A. B. LONGPRÉ,  
Prothonotary of the said Superior Court.

(On the back.) I the undersigned residing in Montreal in the District of Montreal one of the sworn bailiffs of the Superior Court for Lower Canada duly admitted for the said District do hereby certify under my oath of office that on the third day of February one thousand eight hundred and ninety between the hours of one and three of the clock in the afternoon I did serve the present writ and the declaration thereto annexed on the Defendant the Molsons Bank by leaving duly certified copies thereof to them by speaking to and leaving the same with a grown and reasonable person in care of and at their principal place of business in said city of Montreal.

RECORD.  
No. 4.  
Writ of  
Summons  
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ration, filed  
17th Feb.  
1890—con-  
tinued.

10 Moreover that the distance from my domicile to the place of such service is less than one mile and from the Montreal Court House to the place of business of said Defendants is less than one mile.

Done at Montreal this third February 1890.

SAML. C. MARSON, B.S.C.

Declaration of Plaintiffs.  
In the Superior Court.

Declaration  
of Plaintiffs.

Andrew B. Stewart, *es-qual., et al.* - - - Plaintiffs,

*versus*

The Molsons Bank - - - Defendants.

20 Plaintiffs in the annexed writ described complain of Defendants in said writ also described and declared:

That the Honourable John Molson in his lifetime of the City and District of Montreal died at Montreal on or about the twelfth day of July eighteen hundred and sixty having previously made and executed his last will and testament bearing the date the twentieth day of April eighteen hundred and sixty.

30 That the said will was duly probated in the Superior Court for the District of Montreal on or about the seventeenth day of July eighteen hundred and sixty and was duly registered on the nineteenth day of November eighteen hundred and sixty.

That in and by the said will the said testator devised and declared as follows, to wit:

That in and by the clause of the said will marked "tenthly" it is devised and declared,

40 " And as to the residue of my estate real and personal wheresoever the same may be and of whatsoever the same may consist of which I may die possessed or to which I may then be entitled I give devise and bequeath the same to my said brother William Molson of the said city of Montreal Esquire Mary Ann Elizabeth Molson my beloved wife and Alexander Molson my youngest son now living the survivors and survivor of them and the heirs and assigns of the survivor of them upon the several trusts

**RECORD.**

**No. 4.**  
Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890—con-  
tinued.

“ hereinafter declared that is to say upon trust firstly to hold administer and  
 “ manage the said residue of my estate to the best advantage during the full  
 “ term of ten years from and after the day of my decease and further if my  
 “ said wife be living at the expiration of that term and shall have acceded to  
 “ the condition expressed in the sixth section of this my will until the  
 “ expiration of one year from and after her decease secondly to sell and  
 “ convey all such parts of my real estate as are not herein-before specifically  
 “ devised and as they shall deem it advantageous to my estate to sell and to  
 “ grant deeds of sale and conveyance of the same to receive and grant receipts  
 “ for the purchase moneys to invest the purchase moneys and all other moneys 10  
 “ arising from or accruing to my estate and not already invested on good and  
 “ sufficient security either by way of hypothec or mortgage of or on real  
 “ estate or by the purchase of Government stocks or stocks of sound incor-  
 “ porated banks so as to produce interest dividends or profits to secure the  
 “ regular payment of the annuity payable to my said wife under her said marriage  
 “ contract and the additional annuity herein-before bequeathed to her and  
 “ generally to comply with and fulfil all other the requirements of this my  
 “ will and thirdly at or as soon as practicable after the expiration of the  
 “ term of the said trust to account for and give up the said residue as the  
 “ same shall then be found to my residuary devisees and legatees hereinafter 20  
 “ named in all questions touching the sale and disposition of any part of my  
 “ estate or the investment of moneys arising from my estate or accruing  
 “ thereto the concurrence of any two of my said trustees of whom while living  
 “ my said brother William Molson shall be one shall be sufficient.”

That in and by the said clause of the said will marked “ eleventhly ” it is  
 devised and declared :

“ If the said trustees hereby appointed or any of them or any trustee or  
 “ trustees to be appointed as hereinafter is provided shall die or be desirous  
 “ of being discharged or refuse or become incapable to act then and so often  
 “ the said trustees or trustee (and for this purpose any retiring trustee shall 30  
 “ be considered a trustee) may appoint any other person or persons to be a  
 “ trustee or trustees in the place of the trustee or trustees so dying or desiring  
 “ to be discharged or refusing or becoming incapable to act and upon every  
 “ such appointment the said trust premises shall *ipso facto* become vested in  
 “ the new trustee or trustees jointly with the surviving or continuing trustee  
 “ or trustees or solely as the case may require and every such new trustee  
 “ shall have the same powers authorities and discretions as if he had been  
 “ originally appointed a trustee.”

That in and by the clause of the said will marked “ thirteenthly ” it is  
 devised and declared :

“ I further will and direct that at the expiration of the term hereinbefore  
 “ limited for the continuance of the said trusts the said residue of my estate  
 “ real and personal as the same shall consist shall under and subject to the  
 “ conditions and limitations hereinafter expressed fall to and become and be  
 “ for their respective lives only and in equal shares the property of my said  
 “ five sons or if any of them shall have died before the expiration of the said  
 “ term the share of the one so dying or who shall have died shall become and 40

“ be for ever the property of his lawful issue in the proportion of one share to each daughter and two shares to each son subject however to the right of usufruct thereof on the part of the widow.”

That in and by the clause of the said will marked “ sixteenthly ” it is devised and declared :

“ And I further will and direct that as soon as it may be practicable after the expiration of the term herein-before limited for the continuance of the said trust the said trustees shall apportion and distribute the said residue of my estate to and among the parties entitled thereto as herein-before directed taking care in such apportionment and distribution to provide (as far as may be possible) and in such manner as the said trustees may deem best as well against risk of the capital as of any of the shares being lost in the hands of any holder thereof under substitution or as usufructuary thereof as against risk by reason of my said engagements under the marriage contract above referred to of my sons John and Alexander and if in making the apportionment and division of the said residue the said trustees shall deem it necessary or advantageous to sell any part of the said residue and in lieu thereof to apportion and divide the net proceeds of the sales thereof it shall be competent for them so to do anything hereinbefore to the contrary notwithstanding.”

That in and by the clause of the said will marked “ eighteenthly ” it is devised and declared :

“ It is my further express will and I hereby specially direct and ordain as an essential condition of my bequests aforesaid in favour of my said five sons and of their widows respectively that all the estate interest and property whether by way of usufruct annuity or otherwise and every part and portion thereof which my said sons respectively or their widows respectively shall or may in anywise take or receive or be entitled to take or receive under this my will and also all interest or revenues or income in anywise to arise therefrom shall be and remain for ever exempt from all liability for the debts present and future of them or any of them and shall be absolutely insaisissable for any such debts or any other cause whatsoever and shall be held and taken as being to all intents and purposes leg d'aliments by me hereby made and granted in favour of them and each of them and shall moreover be insusceptible of being by them any or either of them assigned or otherwise aliened for any purpose or cause whatsoever.”

That in and by the clause of the said will marked “ twenty-secondly ” it is devised and declared :

“ I hereby constitute and appoint my said three trustees herein-before named and the survivors and survivor of them to be executors and executor of this my last will and testament and I hereby give and transfer unto them as trustees and universal fiduciary legatees and devisees under the same and also as executors thereof the seizin and possession of all my estate real and personal moveable and immoveable wheresoever the same may be and of whatsoever the same may consist and my further will is that the powers of my said executors and executor as such shall be and they are hereby continued beyond the time limited by the law of this part of the province of

RECORD.

No. 4.

Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890—con-  
tinued.

RECORD.

No. 4.  
Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890—con-  
tinued.

“ Canada and until all and every of the obligations of this my will shall have  
“ been accomplished.”

That in and by the clause of the said will marked “lastly” it is devised  
and declared :

“ And lastly provided always and I hereby direct and authorize my dearly  
“ beloved wife by a deed and instrument in writing to be by her signed sealed  
“ and delivered in the presence of and attested by three credible witnesses to  
“ nominate constitute and appoint any other fit person to be a trustee executor  
“ and universal fiduciary legatee and devisee of this my will in the place  
“ and stead of my said wife from and after her decease and when such new 10  
“ trustee and executor shall be nominated and appointed as aforesaid all the  
“ trust estate monies and premises then subject to the trust and provisions of  
“ this my will shall be effectually assigned transferred to and vested in the said  
“ surviving and continuing and new trustee to be held by them and the  
“ survivors or survivor of them upon the trusts of this my will in all respects as  
“ if such new trustee had been originally appointed by this my will and the  
“ person so to be appointed trustee as aforesaid shall have all the powers and  
“ authorities by this my will vested in my said dearly beloved wife in whose  
“ place and stead he shall be substituted as aforesaid.”

That the same Dame Mary Anne Elizabeth Molson wife of the testator by 20  
virtue of the powers conferred on her by said will by act before T. Doucet  
Notary Public on the thirteenth of May eighteen hundred and sixty-one  
appointed Joseph Dinham Molson one of the legatees to be after her decease  
trustee and executor of the said will.

That regular and certified copies of the said will and of the said  
appointment were duly deposited with the said Bank Defendants and with the  
late William Molson executor who was then president of the said Molsons  
Bank.

That the said Dame Mary Ann Elizabeth Molson died on or about the  
fifth day of May eighteen hundred and sixty-two. 30

That on or about the twenty-fifth day of March eighteen hundred and  
seventy-one William Molson and Alexander Molson two of said executors  
rendered their final statement of account to the heirs under said will and on or  
about said date the deposit of said amount was duly made in the office of  
W. A. Phillips, Notary Public, that after such account being rendered all  
powers of sale by the executors ceased and any sale or alienation by them of  
any portion of the estate was and is absolutely illegal null and void the said  
trust being thereby ended and extinguished.

That on said date among other assets of the said estate were thirty-two  
hundred shares (3,200) of the capital stock of the said Bank Defendants 40  
standing in the books of the said Bank in the names of the said executors and  
trustees and that on or about the twenty-seventh day of March eighteen  
hundred and seventy-one one-fifth thereof were handed over to the estate of  
the late George B. Molson one of the legatees under said will and on or about  
the said date another one-fifth thereof to Joseph Dinham Molson another of  
the said legatees and said shares then became vested in the said legatees as  
their respective shares in the said stock and should have been then duly

registered in the books of the said Bank in their respective names as their property as legatees under the said will as institutes with substitution according to the terms of the said will.

RECORD

No. 4

Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890—con-  
tinued.

That on or about the fifth day of April eighteen hundred and seventy-one William Molson and Alexander Molson two of the said executors transferred to said Alexander Molson individually as a pretended sale his one-fifth of the said thirty-two hundred shares (3,200) to wit his six hundred and forty shares of the capital stock of the said Bank without specifying that such transfer was made under the will and subject to its provisions as being substituted property

10 inalienable and insaisissable.

That without such declaration and specification the Bank was not justified in allowing and sanctioning any transfer of such shares such shares being then recorded in the books of the Bank as the property of the said substitution and subject to the condition contained in the will of the said Honourable John Molson.

That on or about the eleventh day of May eighteen hundred and seventy-one the said executors handed over to Samuel E. Molson another of said heirs his one-fifth of the said thirty-two hundred shares (3,200) and the said shares were duly registered as his under said will.

20 That the six hundred and forty shares so as aforesaid transferred and placed in the name of the said Alexander Molson individually were and are the property of the said substitution and a portion of their shares in the said estate of the late Honourable John Molson under said will and as such were and are insaisissable and inalienable for any purpose or cause whatsoever.

That the said transfer by the said executors to the said Alexander Molson of the said six hundred and forty shares were wholly irregular and illegal null and void and said Defendants had no right or authority to permit the said executors so to transfer the said shares and the said executors had no power or authority under said will or by law to make said transfer.

30 That moreover said Bank Defendants well knew that the said six hundred and forty shares so as aforesaid transferred to the said Alexander Molson were his share in the estate of the said late Honourable John Molson and substituted to and in favour of the substitution created by the said will now represented by the said Plaintiffs and the said Bank were guilty of gross negligence and fraud in permitting the said transfer to the said Alexander Molson individually by only two of the said executors one of whom to wit the said Alexander Molson had no capacity to transfer to himself and without concurrence or consent of Joseph Dinham Molson who had been duly appointed executor as aforesaid and all authority of said executors having moreover lapsed on the twenty-fifth of

40 March and previous to such transfer.

That by reason of the said transfer and the said registration in the name of the said Alexander Molson the said Alexander Molson was permitted illegally to deal with the said shares as though they belonged to himself and as though the said substitution had no rights therein and with the assent and concurrence of the said Defendants who well knew that he had no authority to so deal with the said shares and the said shares were transferred sold and otherwise made

**RECORD.**

No. 4.  
Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890—con-  
tinued.

away with and no part thereof remains in the possession of the said Alexander Molson or available for the said substitution.

That moreover at a date when the said Bank Defendants were in possession of one hundred and sixty shares of the said capital stock and when they were able, to prevent any further transfer thereof (the same having been transferred by the said Alexander Molson to one John Molson in trust who was Vice-President of said Bank and held them in trust for said Bank) to wit, on or about the twenty-eighth of September eighteen hundred and seventy-eight the said Bank Defendants were by the ministry of Marler N.P. acting on behalf of Alexander Molson then curator to said substitution and his wife and children, 10  
duly notified that the said substitution was the owner of the said shares and of the illegality of the said transfers and protested therefor.

That the said Alexander Molson is now and has been for many years individually insolvent and the said substitution have no means of recovering from him the said shares or their value.

That the said shares are worth the sum of sixty thousand dollars (\$60,000) and the dividends accrued thereon with interest are worth the further sum of seventy thousand dollars (\$70,000).

That the said Plaintiff Andrew B. Stewart was duly named and appointed curator to the substitution created by the said will in favour of the children of the said Alexander Molson by the Superior Court for the district of Montreal on the 19th day of October last and was duly authorised by the said Superior Court for the District of Montreal on the advice of a family council on the twenty-first day of December last to institute the present action and the said Plaintiff Herbert S. S. Molson is a son of the said Alexander Molson one of the substitutes comprised in the said substitution and the said Alexander Molson is the said institute. 20

That by reason of the premises the Plaintiffs have a right to have the said Defendants condemned and adjudged to transfer and put into the names of the said substitution in favour of the children of the said Alexander Molson as institute and of said substitution under the will of the said late Honourable John Molson the said six hundred and forty (640) shares of the capital stock of said Molsons Bank or in default thereof to pay to them the value of the said shares to wit, the sum of sixty thousand dollars (\$60,000. 00) and the further sum of seventy thousand dollars (\$70,000. 00) amount of dividends and interest as aforesaid. 30

Wherefore Plaintiffs bring suit and pray that the said Defendants may be adjudged and condemned to deliver over transfer and place into the names of the said Plaintiff Alexander Molson as Institute and of the said substitution under the will of the said late Honourable John Molson six hundred and forty 40  
shares (640) of the capital stock of the said Molsons Bank within a delay to be fixed by the judgment and in default thereof that they be condemned and adjudged to pay and satisfy to the said Plaintiffs the said sum of sixty thousand dollars (\$60,000. 00) with interest and that the said Defendants be also condemned and adjudged to pay and satisfy to Plaintiffs the said further sum of seventy thousand dollars (\$70,000. 00) being the dividends on same together



with interest from date of service of process the whole to be invested for the said substitution in the name of the said curator with costs distracts to the undersigned Attorneys.

Montreal 31st January 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiff.

(Endorsed) Writ and Declaration.

(Filed) 17th February 1890.

(Paraphed) A. B. L.

RECORD.

No. 4.  
Writ of  
Summons  
and Decla-  
ration, filed  
17th Feb.  
1890—con-  
tinued.

10

Schedule No. 4.

Superior Court.

Arthur B. Stewart *et al.*, *ès-qual.* - - - Plaintiffs,

*versus*

The Molsons Bank - - - Defendants.

No. 5.  
Dilatory  
Exception  
and Excep-  
tion to the  
Form, filed  
21st Feb.  
1890.

And the said Defendants for dilatory exception to the Plaintiffs' action and demand say :—

That the said Plaintiffs did not produce with the return of their action and have not produced in support thereof the will of the late Honourable John Molson nor the judgment appointing the Plaintiff Stewart in his alleged quality  
-20 of curator nor any of the other exhibits in support of their present action and demand

That by law the Defendants cannot be called upon to answer the said action and demand until such time as the said exhibits have been produced.

Wherefore the said Defendants pray that they be not held to answer the Plaintiffs' demand until such time as the said exhibits shall have been produced and notice thereof given to them the whole with costs distracts to the undersigned Attorneys.

Montreal, 21st February 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

.30

And the said Defendants without waiver of the foregoing and expressly reserving to themselves any rights of exception to the form that they may have upon the filing of the said exhibits for exception to the form of the Plaintiffs' action and demand say :

That this Court cannot produce in the present case nor compel the Defendants to answer in any manner the Plaintiffs' action and demand for the following reasons :

That by the declaration the Plaintiffs seek to recover the capital and interest of certain shares of capital stock in the Molsons Bank alleged to have  
-40 been heretofore registered in the name of the Plaintiffs Alexander Molson as owner.

## RECORD.

No. 5.  
Dilatory  
Exception  
and Excep-  
tion to the  
Form, filed  
21st Feb.  
1890—con-  
tinued.

That the said stock is further alleged to have been subject to a substitution in favour of the children of the said Molson of which substitution the said Andrew B. Stewart claims to be curator.

That only one of the substitutes comprised in the alleged substitution is a party to the present action and that there are other substitutes living most of whom are of the full age of majority who have not been made parties to the present action either personally or by their representatives.

That by the prayer of the said action the Plaintiffs conclude jointly that the said stock be placed in the name of Alexander Molson as institute and of the said alleged substitution and further conclude that certain arrears of 10  
dividends upon the said shares be paid to the said Alexander Molson and the said A. B. Stewart in his said quality and further conclude that in default of the restoration of the said shares the Defendants be jointly and severally condemned to pay and satisfy to the said Alexander Molson as institute and to the said A. B. Stewart as curator the value of the said shares and interest.

That the said parties are wrongly joined in the said action and have no common interest and the said Alexander Molson Andrew B. Stewart and Herbert S. S. Molson are not by law entitled upon the allegations of the said declaration to have or maintain a common action.

That the said action discloses an alleged wrongful disposition by the said 20  
Alexander Molson of property alleged to belong to the said substitution.

That the said substitution and the said Stewart in his quality have no right or title to the possession of the said stock or of any part of the interest or dividends thereon or to any sum in lieu thereof during the lifetime of the said Molson unless the said Molson be declared to be deprived of his rights as institute.

That no judgment has ever been pronounced declaring the said Alexander Molson to be deprived of his rights as institute.

That as institute if the said stock is or ever was subject to a substitution in favour of his children he is entitled to the possession use and enjoyment 30  
thereof during his lifetime.

That the interest of the said Molson is different from and adverse to the interest of the said Stewart in his said quality and of the said Herbert S. S. Molson.

That if the said parties have any rights of action against the Defendants the said rights of action can only be exercised by separate actions.

That the allegations and the conclusions of the said declaration are insufficient and vague and do not disclose how much of the said interest or dividends or of the said sum claimed in lieu thereof or in lieu of the capital of the said stock the said Alexander Molson claims as belonging to him and how 40  
much the said A. B. Stewart in his said quality or the said Herbert S. S. Molson claim as belonging to him.

That the said Defendants cannot plead to the said action inasmuch as their grounds of defence to any claim by said Alexander Molson as institute are different from the grounds of defence to any claim the said Stewart or the said Herbert S. S. Molson may have.

Wherefore the Defendants pray that it be declared that the said parties are wrongly joined in the said action and that the said writ and declaration be declared to be informal null and void and that the Defendants be not held to plead thereto and that the same be hence dismissed with costs distraits to the undersigned attorneys.

Montreal, February 21st, 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

RECORD.  
No. 5.  
Dilatory  
Exception  
and Excep-  
tion to the  
Form, filed  
21st Feb.  
1890—con-  
tinued.

(On the back) I the undersigned one of the sworn bailiffs of Her Majesty's Superior Court for Lower Canada appointed and acted in and for the District of Montreal residing in the city of Montreal do hereby certify and return under my oath of office that I did on the twenty-first day of February eighteen hundred and ninety between the hours of three and four of the clock in the afternoon serve the within original Dilatory Exception and Exception to the Form on Messrs. Robertson Fleet and Falconer attorneys for Plaintiffs by speaking to and leaving true and certified copies thereof for them with a grown and reasonable person in charge of their office at their office in the city and district of Montreal.

(Signed) WALTER REED, B. S. C.

20 Montreal, 21st February 1890.

(Endorsed) Dilatory Exception and Exception to the Form.  
(Filed) 21st February 1890, with deposit of sixteen dollars.  
(Paraphed) A. B. L.

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Schedule No. 6.

To the Honourable Judge of the Superior Court for Lower Canada in the District of Montreal.

The petition of William Molson of the City of Montreal Esquire Mrs. Mary Ann Elizabeth Molson of the same place widow of the late John Molson in his lifetime of the same place esquire and Alexander Molson of the same place esquire respectfully sheweth :

No. 6.  
Copy of the  
Will of the  
Honourable  
John Molson,  
dated 20th  
April 1860  
(Plaintiffs'  
Exhibit  
No. 1).

That the said late John Molson departed this life at the said city of Montreal on the twelfth day of July now instant having previously made his last will and testament bearing the date the twentieth day of April now last past and appointed your petitioners executors thereof as appears to the said last will and testament now herewith produced.

Your petitioners therefore pray that they may be admitted to prove the due execution of the said last will and testament and that probate thereof may

RECORD. be granted to your petitioners as the executors therein named and your  
petitioners will ever pray, &c.

No. 6.  
Copy of the  
Will of the  
Honourable  
John Molson,  
dated 20th  
April 1860  
(Plaintiffs'  
Exhibit  
No. 1)—  
*continued.*

Montreal 17th July 1860.

For the Petitioners

(Signed) T. GRIFFIN, Q.C.,  
Attorney.

Be it as prayed.

Montreal 17th day of July 1860.

(Signed) J. A. BERTHELOT, A. J. S. C.

True copy. (Signed) Monk, Coffin, and Papineau, P. S. C.

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Province of Canada, District of Montreal.

To wit :

William Hart Hopper of the city of Montreal gentleman makes oath and saith that on the twentieth day of April now last past at the said city of Montreal he the deponent with Robert Millington of the same place gentleman and Isaac Jones Gibb of the same place notary public was present and did see John Molson then of the said city of Montreal esquire since deceased duly sign seal publish and declare as and for his last will and testament the instrument in writing marked A now exhibited to him the deponent and hereunto annexed.

20

That the signature Jno. Molson set and subscribed at the foot of the said last will and testament to wit on the twentieth page thereof and the like signature set and subscribed at the foot of each of the nineteen preceding pages of the same are the signatures and each of them is the signature and of the proper handwriting of the said John Molson that each of the said John Molson's said several signatures was so set and subscribed and also his seal set opposite to his final signature on the said twentieth page was so set by him the said John Molson on the said twentieth day of April now last past in the presence of this deponent and also in the presence of the said Robert Millington and Isaac Jones Gibb and that this deponent and the said Robert Millington and Isaac Jones Gibb immediately thereupon at the request and in the presence of the said John Molson and in the presence of each other set and subscribed their respective names as witnesses at the foot as well of the said twentieth page as of each of the nineteen preceding pages of the said last will and testament as their said names respectively now appear thereon.

And further the deponent saith not.

(Signed) WM. H. HOPPER.

Sworn at the city of Montreal this seventeenth day of July A.D. 1860, before me. (Signed) J. A. Berthelot, A. J. S. C.

True copy. (Signed) Monk, Coffin, and Papineau, P. S. C.

40

## Province of Canada, District of Montreal.

RECORD.

To wit :

Robert Millington of the city of Montreal gentleman, maketh oath and saith that on the twentieth day of April now last past at the said city of Montreal he the deponent with William Hart Hopper of the same place gentleman and Isaac Jones Gibb of the same place notary public was present and did see John Molson then of the said city of Montreal esquire since deceased duly sign seal publish and declare as and for his last will and testament the instrument in writing marked A now exhibited to the deponent  
 10 and hereunto annexed that the signature "Jno. Molson" set and subscribed at the foot of the said last will and testament to wit on the twentieth page thereof and the like signature set and subscribed at the foot of each of the nineteen preceding pages of the same are the signatures and each of them is the signature and of the proper handwriting of the said John Molson that each of the said John Molson's said several signatures was so set and subscribed and also his seal set opposite to his final signature on the said twentieth page was so set by him the said John Molson on the said twentieth day of April now last past in the presence of this deponent and also in the presence of William Hart Hopper of the said city of Montreal gentleman and Isaac Jones Gibb of the  
 20 same place notary public (both herein-before named) and that the said William Hart Hopper this deponent and the said Isaac Jones Gibb immediately thereupon at the request and in the presence of the said John Molson and in the presence of each other set and subscribed their respective names as witnesses as well at the foot of the said twentieth page as at the foot of each of the preceding nineteen pages of the said last will and testament as their said names now respectively appear thereon.

And further the deponent saith not.

(Signed) ROBERT MILLINGTON.

Sworn at the city of Montreal the seventeenth day of July A.D. 1860,  
 30 before me. (Signed) J. A. Berthelot, A. J. S. C.

True copy. (Signed) Monk, Coffin, and Papineau, P. S. C.

## Province of Canada, District of Montreal.

To wit :

Be it remembered that on the seventeenth day of July in the year one thousand eight hundred and sixty.

Before me the Honourable Joseph Amable Berthelot an Assistant Judge of the Superior Court for Lower Canada in the district of Montreal appeared William Molson of the city of Montreal esquire Mrs. Mary Ann Elizabeth Molson of the same place widow of the late John Molson in his lifetime of the  
 40 same place esquire and Alexander Molson of the same place esquire executors of the last will and testament of the said late John Molson by Frederick Griffin esquire Q.C. their attorney who by virtue of the fiat upon their petition

No. 6.  
 Copy of the Will of the Honourable John Molson, dated 20th April 1860 (Plaintiffs' Exhibit No. 1)—  
*continued.*

RECORD.  
 No. 6.  
 Copy of the  
 Will of the  
 Honourable  
 John Molson,  
 dated 20th  
 April 1860  
 (Plaintiffs'  
 Exhibit  
 No. 1)—  
*continued.*

presented to me this day produced the last will and testament of the said late John Molson bearing date of the twentieth day of April now last past now marked with the letter A and hereto prefixed and prayed to be admitted to the proof thereof and due proof thereof having been made as appears by the depositions of William Hart Hopper and Robert Millington two of the subscribing witnesses thereto hereto prefixed. I do declare the said last will and testament to be well and duly proved. And I do hereby order that the said last will and testament be registered in the register of probates of the said Court and deposited among the records in the archives of the said Court and that exemplification thereof be granted according to law. 10

Given under my hand and the seal of the said Court on the day month and year first hereinbefore written.

(Signed) J. A. BERTHELOT, A. J. S. C.

True copy. Monk, Coffin, and Papineau, P.S.C.

I, John Molson of the City of Montreal in the Province of Canada Esquire hereby revoking all wills and writing of a testamentary nature by me heretofore made do make and declare this to be my last will and testament.

Firstly, I will and direct the payment of all my just debts and funeral and testamentary expenses as soon as practicable after my decease.

Secondly, I request my trustees to pay sufficient funds into "The Society of the Montreal General Hospital" to constitute each of my sons life governors thereof. 20

Thirdly, I give and bequeath unto each of such of my grandchildren as shall be living at the time of my decease and shall have attained or shall afterwards attain the age of majority the sum of one hundred pounds currency with interest thereon from the day of my decease.

Fourthly, if at the time of my decease no monument or tomb to the memory of my beloved parents shall have been erected or shall be in the course of erection then I desire that my trustees hereinafter named shall either with or without the concurrence of my brothers Thomas Molson and William Molson cause such monument or tomb to the memory of my beloved parents to be erected on some suitable site in or near the city of Montreal and with suitable inscription. 30

And I do authorise my said trustees to expend such sum of money not

(Signed) JNO. MOLSON

(On the margin)

(Signed) W. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB.

exceeding five hundred pounds currency as shall be sufficient for the purpose. 40

Fifthly. I give and bequeath to and to the sole use of my beloved wife Mary Ann Elizabeth Molson during her natural life but subject to the condition hereinafter and in the next following section of this my will contained the usufruct of the dwelling-house garden and premises (called by me "Belmont Hall") fronting on Sherbrook Street in the city of Montreal and extending to Moulton Avenue in the rear in and on which I now reside together with the usufruct during her natural life of all my household goods and furniture linen plate and plated ware wines books paintings engravings horses carriages and furniture of every kind and description in and about the said house garden and premises at the time of my decease upon condition of her using and enjoying the same *en bonne mère de famille* and keeping the whole in good order and repair.

If however my said wife shall at any time be desirous of breaking up the establishment and residing elsewhere then my trustees at her request may and shall let the said dwelling-house garden and premises for any term not exceeding three years at a time for the best rent they can obtain for the same and then pay or assign the said rent to and to the sole use of my said wife during her natural life and shall also sell and dispose of all the moveable effects aforesaid except the plate and plate ware and the portraits (oil paintings) of my late father and myself hereinafter mentioned and vest the net proceeds

(Signed) JNO. MOLSON

(On the margin)

(Signed) W. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

of the sale upon good and sufficient security so that they shall produce interest or dividends and such interest or dividends shall thereafter be paid to and to the use of my said wife during her natural life the whole in lieu of the usufruct of the said dwelling-house garden and premises and moveable effects hereinbefore bequeathed to her.

Sixthly. In addition to the annuity or yearly sum of two hundred pounds currency to which my said wife by our contract of marriage passed at Quebec before Mtre Voyer and his colleague notaries on the eleventh day of October one thousand eight hundred and sixteen will be entitled from the date of my decease I give and bequeath to and to the sole use of my said wife during her natural life a further annuity or yearly sum of eight hundred pounds currency to be with the aforesaid annuity or yearly sum of two hundred pounds paid to her during her natural life and free and clear from all deduction whatsoever in and by half-yearly instalments of five hundred pounds currency each.

I do however so give and bequeath to my said wife the usufruct of the dwelling-house garden and premises and moveable effects in and by the foregoing section of this my will bequeathed to her and the said additional annuity or yearly sum of money in and by this section of my said will bequeathed to her upon the express condition that she shall and do accept the

RECORD. same in lieu of and accordingly shall and do renounce all matrimonial and

No. 6.  
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(Plaintiffs'  
Exhibit  
No. 1)—  
*continued.*

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
" ROBERT MILLINGTON  
" I. J. GIBB

other rights and claims whatsoever against me and my heirs executors or administrators or against my estate that she may have or may be supposed to have or to be entitled to under our said contract of marriage or any clause matter or thing therein contained or under any other title or for any other cause whatsoever and the fact of her accepting any or any part of the benefits by this my will created in her favour shall *ipso facto* import or be held to import an absolute renunciation and waiver on her part and on the part of her heirs executors and administrators of all such matrimonial and other rights and claims whatsoever And in case my said wife shall refuse to accept the said usufruct and additional annuity or sum of money upon the condition aforesaid then and in that case the said bequests of the said usufruct and additional annuity or sum of money and all other the benefits in her favour in this my will contained shall *ipso facto* determine and revert to my estate and the said bequest and other the benefits in her favour in this my will contained shall become and be utterly null and void and *non avenues*.

Seventhly. From and after the decease of my said wife or from and after her refusal to accede to the condition in the foregoing section of this my will expressed I give and bequeath to and to the use of my grandson John William Molson eldest son issue of the marriage of my son John Molson with his present wife Ann Molson from and after his my said grandson's age of majority and during the remainder of his natural life the usufruct of the dwelling-house

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
" ROBERT MILLINGTON  
" I. J. GIBB

garden and premises but not of the moveable effects the usufruct whereof is hereinbefore bequeathed to my said wife during her natural life and until my said grandson shall attain the age of majority or shall previously die without issue his father and mother with their family shall be entitled to occupy the said dwelling-house garden and premises rent free and subject to the said usufruct and to the aforesaid usufruct bequeathed to my said wife I give and devise the said dwelling-house garden and premises unto the lawful issue of my said grandson and his or their heirs for ever. If however my said grandson shall die without issue then from and after his decease and the decease (or refusal as aforesaid) of my said wife I give and bequeath unto my grandson the next eldest surviving son issue of my said son's marriage with his present wife from and after my said grandson's attaining the age of majority and during



the remainder of his natural life the usufruct of the said dwelling-house garden and premises and until he shall attain the age of majority or shall previously die without issue his father and mother with their family shall be entitled to occupy the said dwelling-house garden and premises rent free and subject to the said usufruct and to the aforesaid usufruct bequeathed to my said wife I give and devise the aforesaid dwelling-house garden and premises unto the lawful issue of my said grandson and their his or her heirs for ever.

If upon either of my grandsons aforesaid becoming entitled to the usufruct

(Signed) JNO. MOLSON

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(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

bequeathed to him as aforesaid he shall prefer it my said trustees shall in lieu of such usufruct let the said dwelling-house garden and premises for any term not exceeding three years at a time for the best rent they can obtain for the same and pay or assign the said rent to and to the use of the one of my said grandsons who at the time shall be entitled to the said usufruct and in lieu thereof during his natural life.

20 If both of my said grandsons shall die without issue who shall be living at the extinction of the several usufructs of the said dwelling-house garden and premises hereinbefore bequeathed then the said dwelling-house garden and premises shall fall into and form part of the residue of my estate. It is my will however that if at any time before the expiration of the usufruct of this said house garden and premises hereinbefore bequeathed to my said wife as after her decease before the expiration of the usufruct thereof hereinbefore bequeathed to the sons of my said son John by his present wife respectively my said trustees shall deem it to be advantageous to the parties interested therein to sell and dispose of the said house garden and premises and the usufructuary  
 30 for the time being that is to say my said wife or after her decease the one of my said grandsons who shall then be the usufructuary or if he be not of age his father on his behalf shall concur in their opinion and consent to the sale it shall be lawful for my said trustees to sell and dispose of the said house garden and

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

premises and to execute a good and sufficient deed or deeds of sale and  
 40 conveyance thereof to the purchaser or purchasers anything herein contained to the contrary notwithstanding and in such case the purchase money or moneys in whole or in part shall or may remain vested at interest upon the security of the said house garden and premises or if recovered or received by my said trustees shall be by them vested upon some other good and sufficient security or securities yielding interest dividends or profits such as hypothecs or

RECORD.

No. 6.  
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 No. 1) —  
*continued.*

RECORD.  
 No. 6.  
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 Exhibit  
 No. 1)—  
*continued.*

mortgages of or on real estate Government stocks or funds or stocks of any sound incorporated bank or banks of this province and then such interest dividends or profits arising therefrom shall be paid to the said usufructuary for the time being that is to say to my said wife during her life and after her decease to my said grandson during his life (or to his father during his minority) And at the decease of the survivor of the usufructuaries shall assign the said purchase money or moneys or the security or securities in which the same shall at the time be found to be vested to such the lawful issue of the one of my said grandsons as at the time of the decease of the survivor of the said usufructuaries would have been entitled in virtue of the foregoing devise to 10 the said house garden and premises if the same had not been sold in virtue of

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

the authority to that effect hereinbefore given to my said trustees.

Eighthly. I will and direct that the portraits (oil paintings) of my father and myself now in my possession and all my plate and plated ware of which there shall be an inventory taken immediately after my death be always from 20 and after the decease of my said wife (or from and after her refusal to accede to the condition in the aforesaid sixth section contained) possessed and held in the nature of heirlooms first in succession by my son John his eldest surviving son grandson great grandson and so on; secondly by my second son Samuel Elsdale Molson his eldest surviving son grandson great-grandson and so on, all lawfully begotten; thirdly by my third son George Elsdale Molson his eldest surviving son grandson great-grandson and so on; fourthly by my fourth son Joseph Dinham Molson his eldest surviving son grandson great-grandson and so on; and fifthly by my fifth or youngest son Alexander Molson his eldest surviving son grandson great-grandson and so on. 30

Ninthly. I give and bequeath to my son Samuel Elsdale Molson during his natural life the usufruct of my farm at "la petite Coté de la Visitation" near Montreal bounded in front by the Queen's highway on the north-west side by the heirs Flakerty on the south-east side by the heirs Hastings and in rear by lands of various proprietors on the St. Michel Road and of a piece of land detached from the said farm of about seven acres and a half in

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON 40  
 ,, I. J. GIBB

superficies bounded on both sides by the heirs Flakerty the said farm and piece of land being all the land belonging to me at the said "la petite Coté de la Visitation" and at his decease or if he shall die before me than at my decease I give and bequeath the further usufruct of the said farm and piece of land unto the widow of my said son during the remainder of her natural life if she

shall so long remain his widow but if she shall marry again then so long only as she shall remain his widow.

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*continued.*

And I further give and bequeath to my said son Samuel Elsdale Molson the right by his last will and testament or by a codicil or codicils thereto but not otherwise to give and devise the said farm and land or any part or parts of the said farm and piece of land (subject to the said usufruct thereof in favour of his widow while she shall remain his widow) or to his lawful issue or to such one or more of his lawful issue and in such proportion as he shall see fit or if he have no lawful issue or that such lawful issue shall not be living at the time  
10 of his decease thereunto any such one or more of my lawful sons grandsons or great-grandsons as he shall choose in case however of my said son Samuel Elsdale Molson dying without having by his last Will and Testament or by a codicil or codicils thereto exercised the right hereinbefore given and bequeathed to him then the said farm and piece of land (subject to the said usufruct hereof in favour of his said widow while she shall remain his widow) shall fall into and

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
ROBERT MILLINGTON  
I. J. GIBB

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become part of the residue of my estate.

Tenthly. And as to the residue of my estate real and personal where-soever the same may be and of whatsoever the same may consist of which I may die possessed or to which I may then be entitled I give devise and bequeath the same to my said brother William Molson of the said city of Montreal Esquire Mary Ann Elizabeth Molson my beloved wife and Alexander Molson my youngest son now living the survivors and survivor of them and the heirs and assigns of the survivor of them upon the several trusts hereinafter declared that is to say upon trust, firstly to hold administer and  
30 manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease and further if my said wife be living at the expiration of that term and shall have acceded to the condition expressed in the sixth section of this my will until the expiration of one year from and after her decease, secondly to sell and convey all such parts of my real estate as are not herein-before specially devised and as they shall deem it advantageous to my estate to sell and to grant deeds of sale and conveyance of the same to receive and grant receipts for the purchase moneys to invest the purchase moneys and all other moneys arising from or accruing to my estate and not already invested on good and sufficient security either  
40 by way of hypotheque or mortgage of or on real estate or by the purchase of

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
ROBERT MILLINGTON  
I. J. GIBB

RECORD.

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No. 1)—  
*continued.*

Government stocks or stocks of sound incorporated banks so as to produce interest dividends or profits to secure the regular payment of the annuity payable to my said wife under her said marriage contract and the additional annuity herein-before bequeathed to her and generally to comply with and fulfil all other the requirements of this my will, and thirdly at or so soon as practicable after the expiration of the term of the said trust to account for and give the said residue as the same shall then be found to my residuary devisees and legatees herein-after named.

In all questions touching the sale and disposition of any part of my estate or the investment of moneys arising from my estate or accruing thereto the concurrence of any two of my said trustees of whom while living my said brother William Molson shall be one shall be sufficient. 10

Eleventhly. If the said trustees hereby appointed or any of them or any trustee or trustees to be appointed as herein-after is provided shall die or be desirous of being discharged or refuse or become incapable to act then and so often the said trustees or trustee (and for this purpose any retiring trustee shall be considered a trustee) may appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or desiring to be discharged or refusing or becoming incapable to act and upon every such appointment the said trust premises shall *ipso facto* become vested in the new 20

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
ROBERT MILLINGTON  
I. J. GIBB

trustee or trustees jointly with the surviving or continuing trustee or trustees or solely as the case may require and every such new trustee shall have the same powers authorities and discretion as if he had been originally appointed a trustee.

And I declare that the trustees or trustee by the time being of or under this my will shall be chargeable only with such moneys as they he or she shall actually receive and shall not be answerable the one for the other of them nor for any bank or any banker or other person or persons in whose hands any of the trust moneys shall be placed nor for the insufficiency or deficiency of any stocks funds shares or securities nor otherwise for involuntary losses and that the said trustees or trustee for the time being may reimburse themselves or himself out of the moneys which shall come to their or his hands under the trusts aforesaid all reasonable expenses and charges to be incurred in or about the aforesaid trusts. 30

Twelfthly. I will and direct that during the continuance of the said trust there shall be allowed and paid from my estate to each of my three sons John Molson George Elsdale Molson and Alexander Molson an annuity of four hundred pounds currency per annum (the annuity however of one hundred pounds currency per annum settled by me on Eliza Ann Holmes wife of my said son Alexander Molson by their contract of marriage herein-after mentioned 40

to be during her life held as part of the annuity of four hundred pounds per RECORD.

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER

ROBERT MILLINGTON

” I. J. GIBB

No. 6.  
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(Plaintiffs'  
Exhibit  
No. 1)—  
*continued.*

annum hereby bequeathed to him and to my son Joseph Dinham Molson an  
annuity of five hundred pounds currency per annum and to my second son  
Samuel Elsdale Molson the sum of three hundred pounds per annum the said  
10 several annuities to be paid by half-yearly equal instalments if year by year  
the clear revenue or income of my estate shall suffice therefore but not other-  
wise that is to say if such clear revenue or income of my estate for any year  
after payment of all prior charges and claims thereon and especially payment  
of all charges thereon created by the foregoing sixth section of this my will  
be not adequate to the payment of such annuities then the same for such  
year shall rateably diminish or shall wholly determine as the case may be  
accordingly but in such case if for any subsequent year such clear revenue or  
income shall be more than adequate any such diminution or short payment  
shall and may be rateably made up to the parties with interest if possible  
20 according to the sufficiency of such clear revenue or income and not other-  
wise and in case of the decease of any of my said sons either before me or  
during the continuance of the said trust then if the deceased shall have left or  
shall leave a widow such widow so long only as she shall remain such shall be  
entitled to receive such annuity in place of her deceased husband and if he  
shall have left or shall have no widow or if before the close of the term

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER

ROBERT MILLINGTON

” I. J. GIBB

30

limited for the continuance of the said trust such widow should die or remarry  
then such annuity shall during the remainder of the said term accrue to such  
of her deceased husband's lawful issue as at each time of payment may be  
living in the proportion of one share to each daughter and two shares to each  
son or failing such lawful issue shall wholly cease and determine.

Thirteenthly. I further will and direct that at the expiration of the term  
hereinbefore limited for the continuance of the said trust the said residue of  
my estate real and personal as the same shall subsist shall under and subject  
to the conditions and limitations hereinafter expressed fall to and become and  
40 be for their respective lives only and in equal shares the property of my said  
five sons and at the death of each of my said sons or if any of them shall have  
died before the expiration of the said term the share of the one so dying or  
who shall have died shall become and be for ever the property of his lawful  
issue in the proportion of one share to each daughter and two shares to each

RECORD.  
 No. 6.  
 Copy of the  
 Will of the  
 Honourable  
 John Molson,  
 dated 20th  
 April 1860  
 (Plaintiffs'  
 Exhibit  
 No. 1)—  
 continued.

son subject however to the right of usufruct thereof on the part of his widow if living for so long only as she shall remain his widow it is my will however that it shall be and I hereby declare it to be competent to each of my said five sons by his last will and testament or by a codicil or codicils thereto but not otherwise to alter the proportions in which by the foregoing bequest and devise a share

(Signed) JNO MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

10

of the residue of my estate is bequeathed and devised to his lawful issue and even to will and direct that one or more of his said lawful issue shall not be entitled to any part or portion of the said share of the residue of my estate anything herein contained to the contrary notwithstanding.

Fourteenthly. Provided always and I hereby specially will and direct that the share in the residue of my estate of my eldest son John Molson and of his wife and their lawful issue as aforesaid shall be held and taken to include (as part hereof) the sum of two thousand pounds currency by him in and by his contract of marriage passed before Mtre. I. J. Gibb and his colleague notaries on the seventh day of June one thousand eight hundred and forty-five settled on Anne Molson his now wife and their issue and in terms therein set forth and for payment of which I by the said contract became security and that accordingly the capital of such two thousand pounds shall not be taken by or be paid over to him her or them unless or until a discharge of the said security and of my engagement touching such marriage portion and also of the hypothec by me created in and by the said contract of marriage for securing the payment of the said marriage portion shall have been given to the satisfaction of the said Trustees.

Fifteenthly. And also provided always and I hereby further specially will

(Signed) JNO MOLSON

30

(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

and direct that the share in the residue of my estate of my youngest son Alexander Molson and of his wife and lawful issue as aforesaid shall be held and taken to include as part thereof the full capital or value of the annuity of one hundred pounds currency per annum settled by me on Eliza Ann Holmes his wife and their children by their contract of marriage passed before Mtre. William Easton and his colleague notaries on the thirty-first day of January one thousand eight hundred and fifty-five and that accordingly the capital or value of such annuity shall not be taken by or be paid over to him her or them unless or until a full discharge of the said annuity and of my

40

engagement in relation thereto shall have been given to the satisfaction of my said Trustees. RECORD.

Sixteenthly. And I further will and direct that as soon as it may be practicable after the expiration of the term hereinbefore limited for the continuance of the said Trust the said Trustees shall apportion and distribute the said residue of my estate to and among the parties entitled thereto as hereinbefore directed taking care in such appointment and distribution to provide (as far as may be possible and in such manner as the said Trustees may deem best) as well against risk of the capital of any of the shares being  
 10 lost in the hands of any holder thereof under substitution or as usufructuary thereof as against risk by reason of my said engagement under the marriage contract above referred to of my sons John and Alexander and if in making the

No. 6.  
 Copy of the  
 Will of the  
 Honourable  
 John Molson,  
 dated 20th  
 April 1860  
 (Plaintiffs'  
 Exhibit  
 No. 1)—  
*continued.*

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

apportionment and division of the said residue the said Trustees shall deem it necessary or advantageous to sell any part of the said residue and in lieu  
 20 thereof to apportion and divide the net proceeds of the sales thereof it shall be competent for them so to do anything hereinbefore to the contrary notwithstanding.

Seventeenthly. Whereas the time hereinbefore fixed for the payment of the half-yearly instalments of the annuity and additional annuity to be paid to my said wife and of the half-yearly instalments of the several annuities to be paid to my said five sons and after their deaths to their respective widows are made to run from the date of my decease and that event may possibly take place at such time as may make the payments of all due at inconvenient dates  
 30 I will and declare that it shall be competent to my said Trustees to fix such other half-yearly dates for the payment of the said annuity and additional annuity and of the said several annuities respectively as they in their discretion shall deem most convenient making due allowance however in the first payments according as the first date of payment shall exceed or fall short of six months from and after the date of my decease.

Eighteenthly. It is further my express will and I hereby specially direct and ordain as an essential condition of my bequest aforesaid in favour of my said five sons and of their widows respectively that all the estate interest and property whether by way of usufruct annuity or otherwise and every part and

(Signed) JNO MOLSON.

40 (On the margin)

(Signed) WM. H. HOPPER  
 ,, ROBERT MILLINGTON  
 ,, I. J. GIBB

portion thereof which my said sons respectively or their widows respectively shall or may in anywise take or receive or be entitled to take or receive under  
 p. 3716. E

## RECORD.

No. 6.  
Copy of the  
Will of the  
Honourable  
John Molson,  
dated 20th  
April 1860  
(Plaintiffs'  
Exhibit  
No. 1) --  
*continued.*

this my will and also all interest or revenues or income in anywise to arise therefrom shall be and remain for ever exempt from all liability for the debts present or future of them or any of them and shall be absolutely insaisissable for any such debts or for any other cause whatsoever and shall be and shall be held and taken as being to all intents and purposes legs d'aliments by me hereby made and granted in favour of them and of each of them and shall moreover be insusceptible of being by them any or either of them assigned or otherwise aliened for any purpose or cause whatsoever.

Nineteenthly. I further will and direct that in case any party or parties whomsoever at all interested in this my will shall ever hereinafter in any 10 manner or way contest the same or oppose or obstruct the execution thereof or of any clause matter or thing therein contained then and in that case each and every party so contesting opposing or obstructing shall absolutely and for ever forfeit and lose all and every the bequests devises benefits and advantages which they he or she might otherwise claim under this my will and the same shall *ipso facto* determine and revert to my estate and all and every of the provisions of this my will in so far only as they may tend to grant or secure the same to such party shall become and be utterly null and void and *non avenues* and further in case of any contestation of this my will or of any

(Signed) JNO MOLSON. 20

(On the margin)

(Signed) WM. H. HOPPER  
" ROBERT MILLINGTON  
" I. J. GIBB

opposition or obstruction to the execution thereof I hereby expressly authorize and direct the said Trustees to appropriate and expend upon my estate all such sum and sums of money as in that behalf may be requisite for the maintenance and full enforcement thereof in due course of law.

Twentiethly. I will and direct that my pew in Christ Church Cathedral shall be engaged by my said wife during her natural life and at her decease the 30 said pew to remain and be used as a family pew by my said sons and their respective families.

Twenty-firstly. I further specially give and bequeath unto the said William Molson as a mark of affection and regard and in consideration of part of the trust devolved on him by this my will the sum of one thousand dollars current money of the said Province.

Twenty-secondly. I hereby constitute and appoint my said three trustees herein-before named and the survivors and survivor of them to be executors and executor of this my last will and testament and I hereby give and transfer 40 to them as trustees and universal fiduciary legatees and devisees under the same and also as executors thereof the seizin and possession of all my estate real and personal moveable and immoveable wheresoever the same may be and of whatsoever the same may consist.



And my further will is that the powers of my said executors and executor as such shall be and they are hereby continued beyond the time limited by law

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER  
 „ ROBERT MILLINGTON  
 „ I. J. GIBB

RECORD.

No. 6.  
 Copy of the Will of the Honourable John Molson, dated 20th April 1860 (Plaintiffs' Exhibit, No. 1)—  
*continued.*

in this part of the Province of Canada and until all and every of the requirements of this my will shall have been accomplished.

10 And lastly provided always and I hereby direct and authorize my dearly beloved wife by my deed or instrument in writing to be by her signed sealed and delivered in the presence of and attested by three credible witnesses to nominate substitute and appoint any other fit person to be a trustee executor and universal fiduciary legatee and devisee of this my will in the stead and and place of my said wife from and after her decease and when such new trustee and executor shall be nominated and appointed as aforesaid all the trust estate moneys and premises then subject to the trusts and provisions of this my will shall be effectually assigned transferred to and vested in the said surviving and continuing and new trustees to be held by them and the survivors or survivor 20 of them upon the trusts of this my will in all respects as if such new trustee had been originally appointed by this my will and the person so to be appointed trustee as aforesaid shall have all the powers and authorities by this my will vested in my said dearly beloved wife in whose place and stead he shall be substitute as aforesaid.

In witness of all which I have to this and to each of the nineteen preceding pages of this my last will and testament subscribed my name and to this last

(Signed) JNO. MOLSON

(On the margin)

(Signed) WM. H. HOPPER.  
 „ ROBERT MILLINGTON  
 „ I. J. GIBB

30

page thereof my name and also affixed my seal at the city of Montreal this twentieth day of April in the year of Our Lord one thousand eight hundred and sixty.

(Signed) JNO. MOLSON. (L.S.)

Signed sealed published and declared by the said John Molson the testator as and for his last will and testament in our presence who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses. The words “upon the condition 40 “aforesaid then and in that case the said bequests of the said usufruct “and additional annuity or sum of money” having been first introduced by way of a marginal note in the fourth page hereof and the words “And

## RECORD.

No. 6.  
Copy of the  
Will of the  
Honourable  
John Molson,  
dated 20th  
April 1860  
(Plaintiffs'  
Exhibit  
No. 1)—  
*continued.*

myself" having been also first interlined between the thirtieth and thirty-first lines from the top of the second page hereof.—

(Signed) Wm. H. Hopper, of Montreal, Gentleman  
" Robert Millington, of Montreal, Gentleman.  
" I. J. Gibb, of Montreal, Notary Public.

The foregoing is the last will and testament of the late John Molson Esquire marked with the letter A and referred to in the prefix petition of William Molson Esquire and others executors and depositions of William Hart Hopper and Robert Millington witnesses.

Montreal 17th July 1860.

(Signed) J. A. BERTHELOT, A. J. S. C.

10

We the undersigned joint Prothonotary of the Superior Court for Lower Canada in the District of Montreal do hereby certify that the foregoing last will and testament of the said late John Molson the depositions of the witnesses touching the probate of the same the petition preceding the same and the order of the Judge thereupon are true copies of the originals filed and remaining of record in the archives of the said Court of which said archives we are the depositing\*

\* *Sic.*

Montreal this eighth day of September one thousand eight hundred and sixty.

(Signed) MONK, COFFIN AND PAPINEAU, P. S. C.

20

I certify that the foregoing document was entered and registered at full length in the Registry Office for the county of Montreal in register B. A. Vol. 3 page at one o'clock in the afternoon of the nineteenth day of November one thousand eight hundred and sixty under the number twenty-eight thousand nine hundred and forty-nine.

(Signed) W. H. RYLAND,  
Deputy Registrar.

(On the back.) Probate of the last Will and Testament of the late John Molson Esquire.

30

(Copy.)  
(Endorsed.) (Plaintiff's Exhibit No. 1.)  
(Filed) 8th March 1890.

## Schedule No. 7.

RECORD.

Whereas the late Honourable John Molson in his lifetime of the city of Montreal Esquire did by his last will and testament dated the twentieth day of April one thousand eight hundred and sixty and duly proved before the Superior Court for Lower Canada at Montreal on the seventeenth day of July following provide as follows :

No. 7.  
Act of  
Appointment  
of Jos.  
Dinham  
Molson as  
one of the  
Executors  
of the last  
Will of Hon.  
John Molson,  
dated 13th  
May 1861  
(Plaintiffs'  
Exhibit  
No. 2).

10 " And lastly, provided always and I hereby direct and authorize my dearly  
" beloved wife by my deed or instrument in writing to be by her signed sealed  
" and delivered in the presence of and attested by three credible witnesses to  
" nominate substitute and appoint any other fit person to be a trustee executor  
" and universal judiciary legatee and devisee of this my will in the stead and  
" place of my said wife from and after her decease and when such new trustee  
" and executor shall be nominated and appointed as aforesaid all the trust estate  
" moneys and premises then subject to the trusts and provisions of this my will  
" shall be effectually assigned transferred to and vested in the said surviving  
" and continuing and new trustees to be held by them and the survivors or  
" survivor of them upon the trusts of this my will in all respects as if such new  
" trustee had been originally appointed by this my will and the person so to be  
20 " appointed trustee as aforesaid shall have all the powers and authorities by  
" this my will vested in whose place and stead he shall be substituted as  
" aforesaid."

30 Now therefore know all men by these presents that I Mary Ann Elizabeth  
Molson of the city of Montreal formerly the wife now the widow of the said late  
Honourable John Molson do hereby by virtue of the powers thus vested in me  
under the said last will and testament of my said late husband the said  
Honourable John Molson deceased do nominate substitute and appoint Joseph  
Dinham Molson one of the children issue of my marriage with the said late  
Honourable John Molson who is now at Montreal aforesaid but for some time  
past residing in Dublin in Ireland Esquire to be a trustee executor and universal  
judiciary legatee and devisee of the said last will and testament of the said late  
Honourable John Molson so that under and by virtue of the said appointment  
all the trust estate moneys and premises subject to the trusts and provisions of  
the said last will and testament and in accordance with the terms thereof shall  
be and are effectually assigned transferred to and vested in the said surviving  
and continuing and new trustee (the said Joseph Dinham Molson) to be held  
by them and the survivors or survivor of them upon the trusts of the said will  
in all respects as if said Joseph Dinham Molson had been originally appointed  
by the said last will and he shall have all the powers and authorities by said will  
vested in me in whose place I hereby substitute him as aforesaid.

40 In witness whereof I have hereunto set my hand and seal at Montreal in  
the district of Montreal this thirteenth day of the month of May in the year of  
our Lord one thousand eight hundred and sixty-one.

(Signed) M. A. E. MOLSON. (L. s.)

Signed sealed and delivered by the above-named Dame Mary Ann Elizabeth  
Molson in our presence who at her request and in her presence and in

RECORD.

the presence of each other have hereunto subscribed our names as witnesses.

No. 7.

Act of  
Appointment  
of Jos.  
Dinham  
Molson as  
one of the  
Executors  
of the last  
Will of Hon.  
John Molson,  
dated 13th  
May 1861  
(Plaintiffs'  
Exhibit  
No. 2)—  
*continued.*

(Signed) L. G. Fanteux, of Montreal, Merchant.  
" Alex. Mousseau, of Montreal, Broker.  
" T. Doucet, of Montreal, a Notary Public.

True copy by me duly compared of the original deposited and remaining of record in the archives and greffe of the late Theod. Doucet in his lifetime Esquire Notary Public of the City of Montreal of which said original minutes and greffe I am by law the depository.

(Signed) THEOD. DOUCET, N. P. 10

On the thirteenth day of the month of May in the year of Our Lord one thousand eight hundred and sixty-one,

Before us, the undersigned Notaries Public, duly commissioned and sworn, in and for that part of the Province of Canada, heretofore constituting the Province of Lower Canada, residing in the City of Montreal, in the said part of the said province.

Personally came and appeared Dame Mary Ann Elizabeth Molson, of the City of Montreal, widow of the late Honourable John Molson, in his lifetime of the same place, esquire who has signed and executed the annexed document. 20

Who declared the said document to be her act and deed, and that the signature "M. A. E. Molson" at the foot of the same, is of the proper handwriting, and the signature of her the said Mary Ann Elizabeth Molson, and deposited the same to be of record in the office of T. Doucet, one of the undersigned Notaries.

Of which *acte* done and passed at the City of Montreal, in the office of T. Doucet, one of the undersigned notaries on the day, month and year first above written, under the number sixteen thousand, two hundred and thirty-one and the said appearer has signed with us, the said notaries, these presents having been first duly read in her presence. 30

(Signed) M. A. E. MOLSON.  
(Signed) T. DOUCET, N. P.

(Signed) JAS. SMITH, N. P.

True copy by me duly compared of the original minute remaining of record in the archives and greffe of the late Theod. Doucet, in his lifetime Esquire Notary Public of the City of Montreal of which said original minutes and greffe I am by law the depository.

(Signed) THEOD. DOUCET, N. P.

On this seventeenth day of April, in the year of our Lord, one thousand eight hundred and sixty-three.

At the request of Joseph Denham Molson Esquire of

We, the undersigned Notaries Public, duly commissioned and sworn in and for that part of the Province of Canada, heretofore constituting the Province of Lower Canada, residing in the City of Montreal, in the said part of the said province served on William Molson Esquire, and on Alexander Molson Esquire, both of Montreal, and on each of them, speaking to themselves in person, at their respective offices in this City, a copy of the Act by Dame Mary Ann Elizabeth Molson, widow of the late Honourable John Molson naming the said Joseph Denham Molson, as one of the executors of the last Will and Testament of the said late Honourable John Molson, to which, these presents are annexed, and also a copy of the foregoing act of dépôt of the same.

Of which acte done and passed at the City of Montreal, in the office of T. Doucet, one of the under-signed notaries on the day month and year first\* above written, under the number nineteen thousand, six hundred and forty-two, and we have signed in testimony of the premises.

(Signed) H. B. WRIGHT, N. P.  
(Signed) T. DOUCET, N. P.

True copy by me duly compared of the original minute remaining of record in the archives and greffe of the late Theod. Doucet, in his lifetime, Esquire, Notary Public of the City of Montreal, of which said original minutes, and greffe, I am by law the depository.

(Signed) THEOD. DOUCET, N. P.

(On the back.) 13th May 1861, Acte of Dépôt by Dame M. A. E. Molson, widow of the late Honourable John Molson, of the nomination of Jos. D. Molson, Esquire, as one of the executors of the last Will of the said Honourable John Molson, in accordance with the said Will. (Copy.)

(Endorsed.)  
(Plaintiffs' Exhibit, No. "two.")  
(Prod.) 8 Mars 1890.  
(Paraphed A. B. L.)

RECORD.

No. 7.  
Act of  
Appointment  
of Jos.  
Dinham  
Molson as  
one of the  
Executors  
of the last  
Will of Hon.  
John Molson,  
dated 13th  
May 1861  
(Plaintiffs'  
Exhibit  
No. 2)—  
*continued.*

\* Sic.

20

30



## RECORD.

## Schedule No. 8.

No. 8.  
Final  
Statement of  
Account of  
William and  
Alexander  
Molson  
rendered and  
deposited in  
the Office of  
W. A. Phil-  
lips, N.P.,  
on the  
25th March  
1871, and  
deposited in  
the Office  
of W. A.  
Phillips,  
Notary, the  
15th June  
1871  
(Plaintiffs'  
Exhibit  
No. 3).

On this day the twenty-seventh of the month of March in the year of our Lord one thousand eight hundred and seventy-one.

Before the undersigned Public Notary duly commissioned and sworn in and for that part of the Dominion of Canada which heretofore constituted the Province of Lower Canada now the Province of Quebec residing in the City of Montreal in the said Province.

Personally came and appeared Samuel Elsdale Molson of the said City of Montreal Esquire.

Joseph Denham Molson of Lennoxville in the said province Esquire and William H. Kerr of Montreal aforesaid Esquire Advocate in his capacity of tutor to the minor children issue of the marriage of the late George Elsdale Molson with Dame Harriet Mary Ann Kerr his wife.

Who requested William Anderson Phillips the undersigned notary to receive and deposit in his office a statement of the expenditure and receipts of the estate of the Honourable John Molson from the twenty-sixth day of July eighteen hundred and sixty to the twenty-fifth day of March instant.

Which is hereunto annexed, signed and identified by the signatures of the parties hereto and of the said notary to the end that the same may be preserved among his notarial record, and that reference may be had thereto and authentic copies thereof be granted to whomsoever the same may appertain *à qui de droit*.

Done and passed at the City of Montreal in the office of W. A. Phillips the said Notary under number three thousand one hundred and twenty-three and signed by the parties hereto with me Notary subscribing after these presents had been to them duly read.

(Sgd.) J. D. MOLSON.  
" WILLIAM H. KERR, Tutor.  
" S. E. MOLSON.  
" W. A. PHILLIPS, N. P.

A true copy of the original hereof which remains of record in my office.

(Signed) W. A. PHILLIPS, N. P.

\* (Not  
officially  
examined.  
By consent.)

		Expenditure.		No.	Amount.	Receipts.		Amount.
1860.						1860.		
Aug. 6	J. D. Molson bal. his a/c. -	1	153 65			July 26	Deposited in Mol. Bk. -	236 64
	Gas a/c. late Hon. J. M. -	2	4 55			Aug. 3	" B. Tansey -	46 66
	Sale and fees a/c. funeral exp. -	3	575 63			Aug. 4	" M. Mill and	
	Ins. Gr. St. Jas., prop. -	4	75				Howley -	240
10	J. Patton & Co. late Hon.						" Jane's note -	505 75
	J. M. -	5	18 99			8	H. Starns	
	Allow. G. Ed. Molson -	6	48				McGibbon -	312
	" Children -	7	49				Langelier -	202 82
	" S. E. M. -	8	180				Irving -	329 25
	P. Howley -	9	100				Starns -	126 00
	Allow. Alex. Molson. -	10	200				Rent cottages -	3
	Strachan and Smith -	11	4 03					973 07

		Expenditure.	No.	Amount.			Receipts.	Amount.
1860.					1860.			
Aug. 10		Bills payable - - -	12	2,775 27	Aug. 10	Spearpoint - - -	50	
21		Advertising funeral exp. -	13	50		Disctd. bills pay - 2,000		1,990 42
		R. Bennon a/c. contract -	14	400 00				
		P. Howley - - -	15	127 13	15	Grand Trunk - 760		
		Moir and Wand a/c. contract -	16	90		Mrs. Price - - 212 50		972 50
30		Hon. J. M. Mck. give to Mrs. M. - - -	17	168 86	18	M. Avenue G. Browne -	500	
Sept. 1		Insur. 3 Rev. - - -	18	38		F. G. Farmer - 146 25		
4		Bill pay. - - -	19	2,000		J. Fulton & Co. - 175		
		G. Brown Arch. - - -	20	120			321 25	
		Ca. Gazette advertz. - - -	21	5 75	21	D. and J. McCarthy instl. -	53 54	
11		Ins. M. Mill 1 mo. - - -	22	11 88	23	J. Haldam and int. - - -	1,175	
		R. Wright painting a/c. -	23	100		$\frac{1}{2}$ Grenier note - - -	224	
		Prothonotary 3 cop. will -	24	27	Sept. 1	Instl. C. and St. L.		
		Ins. Mrs. Price farm - - -	25	63		Lt. - - - 310		
		R. Benn on a/c. cont. - - -	26	530		Pt. Hughes rent - 2 50		312 50
Oct. 1		Prof. annuity Mrs. M. widow -	27	887 67	4	Tansey - - - 46 66		
		" " J. D. M. - - -	28	443 83		Rodden - - - 50		
		" " J. M. - - -	29	355 07		Divd. Est. D. Mot. - 100		196 66
		" " G. G. M. - - -	30	355 07				
		" " S. E. M. - - -	31	266 30	Oct. 1	W. Rodden - - - 50		
		" " A. M. - - -	32	266 30		Spearpoint - - 84 50		134 50
		W. McLaren - - -	33	118 55			6,400	
		Abbotts and Dorman - - -	34	87 41	Nov. 2	Mols. Bk. and div. - - -		
		F. Griffin prof. service - -	35	33		T. G. Farmer - 100		
		Roaf and Davis M. Mill - - -	36	641 57		Rodden - - - 50		
		Wand and Jackson - - -	37	151 80		Tansey - - - 46 66		196 66
		A. McGibbon a/c. 1859 - - -	38	38 40	5	Jane's note and int. - - -	506 23	
		Mrs. Turney clearing stove -	39	2 45	17	Mrs. Price rent - - -	212 50	
		W. E. Spearpoint a/c. - - -	40	44		Spearpoint - - -	110 25	
		Mont Herald 1859 to 1860 -	41	8	23	J. Howley - - 334		
		M. Mill cash W. Keeler 6 Sep.	42	50		McLaren - - - 50 83		
		" " 24 Sep. - - -	43	50		Rogers Const. - 36		420 83
		Savage and Lyman clock - - -	44	45 50	Dec. 11	G. T. K. rent - 760 00		
		Books for estate - - -	45	10		Assesst. - - 232 50		992 50
		Janes & Co. coal - - -	46	4 50	1861.			
		Belts and al. painting house -	47	18 77	Jan. 21	Bell pay disct. - - -	9,330 57	
		W. Hopper solr. - - -	48	43 31	Feb. 2	Jane's note - - -	506 04	
		W. D. McLaren July 1861 - -	49	81 22		$\frac{1}{2}$ J. Carden - - 122 56		
		J. McKenna suit - - -	50	33 30		Rodden & Co. - 193 75		
		Mrs. Clarke gratuity - - -	51	40		" int. - 1 34		
		Exp. to N. Y. and Boston V. and M. - - -	52	84 37		Tansey - - - 139 98		
		Legacy W. Molson Esq. - - -	53	1,000		Spearpoint - - 24 75		
3		Int. on \$7,000 - - -	54	202 94		Moir a/c. Starnes - 128 74		
8		J. D. M. int. on \$4,000 - - -	55	160		D. and I. McCarthy 497 78		
		Assess Côté de la Visitation -	56	6 19		Hogan and Penn - 12 50		
		Mont Transcript - - -	57	1 29		S. Michel Rd. I. - 15		1,136 40
		J. McKenna - - -	58	8	21	M. Mill asts. - 497 07		
		A. M. Exp. M. Mill prof. - -	59	26 40		J. Patton & Co. - 258 33		
		Ind. free Bk. Blt. in reduct. -	60	800 00		Roaf and Davis asts. - - - 198 58		
						Spearpoint - 134		
						J. Patton & Co. - 250		
						Moir a/c. garden prof. and int. - 140 60		1,478 58
					Mar. 2	Int. C. and St. L. R. R. -	310	
					Apl. 1	Mol. Bk. divd. - - -	6,400	
		Forward - - -				Forward - - -		

RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1860.		Bt. forward	—		1861.		Bt. forward	
Oct. 25		La Minerve advz.	61	4 53	Apl. 8		Deposited G. T. R.	
		Waterwork	62	23 50			rent	760
		J. D. M. Exp. Portland	63	27 80			Mrs. Price	312 50
36		Wright a/c. contract	64	170			J. Patton & Co.	130
		Ed. Hornier	65	7 30			Rent Richelieu & Co.	400
		Inst. M. M.	66	11 88			Spearpoint	63 50
Nov. 10		A. M. Exp. Matilda	67	9 35			Rodden & Co.	193 75
		Regist. of will	68	8			Hon. In Young	
23		Exp. W. and A. M. Matilda	69	27 20			Canal stove	500
		" A. M.	70	17 45			T. G. Fanner	200
		Gen. Hosp. to be Gov.	71	368			R. Horrower	56
17		P. Howley	72	57				2,615 75
28		R. Holland	73	33 70	9		Disctd.	397 63
		Instl. 2 Riv.	74	30			Deposit	60
		Dwyn and Tolland	75	9	24		Bill pay dist.	9,525 14
		G. E. M. interest	76	49	May 15		Tansey	153 32
		Gazette adv. ex.	77	23 23	21		Roger	36
		" subscrip.	78	7 34			W. M. ap. V. & M.	440
		Herald	79	67			Hogan and Penn	12 50
		M. Mill reserd. W. Keeler	14				W. Brown Insr. and	
		Nov.	80	175			int.	432
		Ins. M. W.	81	23 74			Tansey	46 66
		Postage and Cat. Hirs. M. M.	82	7 12			G. T. R.	760
		Rec. W. Keeler	83	100			Patton & Co.	7 50
Dec. 7		Exp. W. and A. M. Amber	84	30 55			Rodden & Co.	40
		R. Bean	85	145			Spearpoint	710 75
10		A. M. Bal. allow.	86	123 23			Hogan and Penn	12 50
		P. Howley	87	74 35			Patton & Co.	150
17		W. Keeley M. Mill	88	230			"	150
18		Ry. spikes	89	5 12				3,252 23
		Grey Nuns Const.	90	33 33	30		Bill disctd.	8,834 30
28		Exp. to Matilda	91	11 35			Mrs. Price	212 50
		Learmont's a/c. clock	92	2 50	June 13		T. G. Farmer	350
		Funeral cards gaz.	93	3			Tansey	46 66
		Gazette post bills	94	2			Rodden & Co.	60
1861.		T. and W. M. a/c. buckwheat	95	2 10				669 16
		West Bal. Sun. M. M.	96	10			W. Molson V. and M.	66 07
Jan. 3		W. Keeler M. Mill	97	100	July 16		Bill disctd.	3,927 13
		R. Benn a/c.	98	178 72			Spearpoint	39
10		G. Garth a/c.	99	146 03			W. Molson V. and	
		Med. Hall a/c.	100	17 77			M.	148 70
		J. McKenna to M. M.	101	2 45			J. G. Farmer	373 10
		W. Keeler	102	100			Tansey	46 66
		Assess and Spl.	102	1,114 75			McLaren a/c.	
Feb. 2		R. Campbell & Co.	104	81 31			Starnes	319 92
		Bill pay.	104	9,090 19			112	
		J. and J. Bell a/c.	105	9 50			Instal. O. & R. F.	
		Jas. Walker	106	10 20			Co. Shed.	896
		" M. M.	107	5 15				1,823 36
		C. St. Amad	108	40	18		J. G. Farmer	200
		D. Kinnear & Co. adv.	109	22 40	27		Bill disct.	9,719 64
		Pringle M. M.	110	150	Aug. 19		Collection	218 16
		Cheque book G. Matt.	111	4 50			Irwin a/c. Starnes	312 48
		E. E. Bell N. P. V. and M.	112	4			Langelier	194 04
		Dr. Sutherland July 60	113	10	28		Rodden	93 75
		Dr. Campbell	114	116			Tansey	
		W. Keeler M. M.	115	100			Spearpoint	46 66
		A. M. Allow. Man.	116	200			McManamy M.P.	84 00
		A. McGibbon M. Mill	117	6 35			Patton & Co.	100
4		T. Pringle	118	100			McGibbon a/c.	
6		Lyman Clare	119	44 95			Starnes	150
8		T. Pringle	120	100			W. Molson V. and	
12		"	121	300			M.	297 60



		Expenditure.	No.	Amount.			Receipts.	Amount.
1861.					1861.			
Feb. 14	Rep. Com. St. Prof. - -	122	4		Aug. 28	J. Howley M. M. -	777 40	
	Rent water lot. Matilda - -	123	140		Sep. 2	Bill disctd. - -	827 60	
	J. Aislie a/c. July 60 - -	124	5					2,880 53
					17	" - - - -		18,943 04
					30	W. Molson M. Mill - -		2,945 92
					Oct. 1	Deposit - - - -		1,000
						Bank divd. - - - -		200
						W. Molson M. Mill - -		6,400
					1/28	Mrs. Price - - - -	112 50	2,631 06
						B. Tansey - - - -	46 66	
						J. Haldam - - - -	1,120	
						D. and J. Mc Carthy - -	106 66	
						Spearpoint - - - -	60	
						G. T. R. - - - -	760	
						Patton - - - -	150	
						Roddon & Co. - -	100	
						Hogan and Pen - -	12 50	
						Int. C. and St. L. R. R. - -	310	
								2,778 32
	Forward - - - -		28,295 06			Forward - - - -		105,020 51
1861.	Bt. forward - - - -		28,295 06	1861.	Bt. forward - - - -			105,020 51
Feb. 16	J. Pringle M. Mill - - - -	125	100	Oct. 7	Bill pay disctd - - - -			8,345 14
	Exp. to Matilda and Bach - -	126	16 15		Tansey - - - -	46 66		
	" " Dundas - - - -	127	4 25		Rogers Const. - - - -	36		
	W. Keeler M. Mill - - - -	128	175		T. G. Farmer - - - -	26		108 66
	" 17 Jan 10, 9 Feb. 10 - -	129	20					
20	J. Pringle Mckill - - - -	130	200	29	T. Molson V. and M. - - - -	400		
	" " - - - -	131	200		W. Molson - - - -	373 27		773 22
	W. Keeler " - - - -	132	100					
	W. Rowland a/c. - - - -	133	14 60	30	Bill disctd. - - - -			9,935 45
Mar. 6	A. M. and Sands - - - -	134	24 55	Nov. 11	1/2 Grenier note and int. - -			215 14
22	" to Matilda - - - -	135	23 73	12	Bill disctd. - - - -			1,963 57
25	" " - - - -	136	35 28	Dec. 2	Bill disctd. - - - -			7,759 10
Apr. 1	Bill pay. - - - -	137	4,000		Roddon & Co. - - - -	50 30		
	1/2 yl. allow. Mrs. M. A. E. M. -	138	2,000		Spearpoint - - - -	70		
	W. Keeler cash a/c. to 27 Mch. -	139	655		Roddon & Co. - - - -	50		
8	Auclaire V. and M. - - - -	140	240		Tansey - - - -	95 12		
	A. M. exp. 3 riv. - - - -	141	24 17		T. G. Farmer - - - -	150		
	Ins. &c. M. Mill - - - -	142	63 85		Patton & Co. - - - -	150		
	G. E. Mon. a/c. del. 1,400 - -	143	600		G. T. R. - - - -	1,033		
	T. Pringle M. Mill - - - -	144	331 39		Hogan and Penn - -	16 25		
	W. Keeler on 2 - - - -	145	100		Turcotts - - - -	503 25		
	Wages and M. Mill - - - -	146	59 86		Patton & Co. - - - -	112 50		
	Auclaire V. and M. - - - -	147	241 17		Browne V. & M. - -	650		2,880 42
	G. E. M. 1,400 inst. - - - -	148	840					112 50
	Mol. Free Bk. and Sund. - -	149	346 49	11	W. Molson M. Mill - - - -			
11	W. Keeler M. M. - - - -	150	150	1862.				
12	Heading machine - - - -	151	113 13	Jan. 20	Bill disctd. - - - -			2,945 92
15	Bal. and duties, &c. - - - -	152	71 95		Bill disctd. - - - -			2,945 92
24	Bill pay. - - - -	153	9,500	Feb. 15	G. T. R. - - - -	760		
May 17	Auclaire 13/18 V. and M. - -	154	400		Spel. taxes - - - -	185		
	Sunds. M. Mill - - - -	155	400 25		Hogan and Penn - -	12 50		
	Bill pay. 10 do. - - - -	156	400		D. and J. Mc Carthy - -	479 99		1,437 49
	Wages M. Mill - - - -	157	69 07					491 09
	A. M. exp. 3 Riv. - - - -	158	2 10	19	Bill disctd. - - - -			7,858 85
	Est. Postage Telegrams - -	159	2 14		T. G. Farmer - - - -	150		
	" " M. Mill - - - -	160	9 58		Roddon & Co. - - - -	198 15		
	J. Walker files - - - -	161	5 45					
23	J. MacDougall - - - -	162	907 46					
29	O. R. for W. Co. - - - -	163	6,000					

RECORD.  
No. 8.  
Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

RECORD.

No. 8.  
Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1861.	May 17	Ins. Royal - - -	164	51	1862.		Patton & Co. - 100	
	June 13	Moir and Wand - - -	165	7 50			Moir and Wand	
		J. Griffin opinion - - -	166	15			H. S. - - - 114 43	562 53
		Sunds. to M. Mill - - -	167	16 69				150
	10	Keeler - - - - -	168	300	28		Patton & Co. - - - -	
	13	Bill payable - - - -	169	2,309 37	Mar. 5		Haldam int. - - - 90	
		Auclaire V. and M. - - -	170	200			Spearpoint - - - 56	146
		Kershaw safe - - - -	171	220				7,754 56
		G. Browne V. and M. - - -	172	140			Bill disctd. - - - -	310
		Janes & Co. M. Mill - - -	173	10 38	6		C. & St. L. R. R. int - - -	
	14	Bal. O. and R. For. Co. - - -	174	4,083	13		Tansey - - - 46 66	
July	15	Sunds. M. Mill - - - -	175	21 17			Spearpoint - - - 50 25	
	10	Auclaire V. and M. - - -	176	200			Patton & Co. - - - 100	
		Sunds. M. Mill - - - -	177	316 15			W. Molson a/c. - - - 416 50	
		Auclaire V. & M. - - - -	178	320			Tansey - - - 46 66	
		Note Co. and St. L. R. R. Co. -	179	829 31			Spearpoint - - - 25	
		Sunds. M. Mill - - - -	180	99 40			Richelieu Co. - - - 400	
		G. Browne and al. a/c. - - -	181	30 45			McManamy - - - 248 09	
		Sunds. M. Mill - - - -	182	150			Tansey - - - 46 66	
		" - - - - -	183	76 20			Patton & Co. - - - 50	
		Auclaire V. and M. - - - -	184	316			Tansey - - - 46 66	
		Sunds. M. Mill - - - -	185	12 50				1,476 48
		Dwyn and Tolland - - - -	186	60 75			Postage overpaid - - - 1 56	1,478 04
		G. M. bal. mang. - - - -	187	742 19				
	27	Bill pay. - - - - -	188	9,700			W. Molson 1/2 M. Mill 180 11	
Aug.	28	Sund. M. Mill - - - -	189	185 26			" V. and M. 401 17	581 28
					24		Bills disctd. - - - -	2,945 35
					Apr. 1		Bank dividend - - - -	6,400
							Bill disctd. - - - -	4,210 88
					May 19		G. T. R. - - - -	4,198 66
								760
					22		Bill disctd. - - - -	7,854 25
					June 9		Seminary Canal Store - - -	2,500
							Bill disctd. - - - -	5,301 62
					27		Spearpoint - - - 50	
							Hogan and Penn - 12 50	
								62 50
							Bill disctd. - - - -	2,945 35
		Forward - - - - -		77,154 00			Forward - - - - -	206,339 72
1861.		Bt. forward - - - - -		77,154 00	1862.		Bt. Forward - - - - -	206,339 72
Aug. 28		Sunds. M. Mill - - - -	190	643 67	July 21		Patton & Co. - - - -	100
		Sunds. a/c. - - - - -	191	116 63			Bill disctd. - - - -	4,172 57
		Auclaire V. and M. - - -	192	1,018 80	Aug. 7		Harover ins. - - - 56	
		Insurance - - - - -	193	100			Spearpoint - - - 80	
		A. M. allow. to Ist. - - -	194	200			Tansey - - - 186 64	
Sept. 2		Bill pay. - - - - -	195	9,000			Late Mrs. Molson	
	17	" - - - - -	196	4,000			M. M. - - - 160	
Oct. 1		Mrs. M. A. E. M. annuity -	197	2,000			Rogers ins. - - - 36	
		J. D. M. and int. - - - -	198	1,030			Howley Starnes - - - 99	
		J. M. - - - - -	199	824			Panton - - - 110	
		G. E. M. - - - - -	200	824			McManara - - - 461 90	
		S. E. M. - - - - -	201	618			Sund. hal. Canal - - - 78 21	
		A. M. - - - - -	202	618			Patton & Co. - - - 100	
		Bill pay. - - - - -	203	3,098			Panton - - - 111	
		M. Molson 1/2 int. D. J. M. -	204	35 55			Browne a/c. G. P. - 417 22	
		J. Molson - - - - -	205	35 55			Patton & Co. - - - 100	
		Mol. Free Bk. in reduct. - -	206	43 81			Irwing a/c. Starnes - 297 36	
		W. Keeler, M. Mill - - - -	207	183 35				2,294 33
		Wages - - - - -	208	100	30		Bill disctd. - - - -	7,989 26
		A/c. tender V. and M. - - -	209	1 87	Sep. 1		Bal. Seminary Canal store -	3,232 30
		Ins. M. Mill - - - - -	210	54			Bill disctd. 4 - - - -	4,938 63

RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1861.					1862.			
Oct. 1	W. Keeler - - -	211	100	Sept. 13	Bill disctd. - - -	5,302	66	
	A. M. exp. to Matilda - -	212	9 25	Oct. 2	Bank divd. - - -	6,400		
	Int. 6 M. Ir. prop. - -	213	63		McLaren H. Starns 304 44			
	M. Mill stand. logs. - -	214	1,000		Tansey - - - 139 98			
5	Bill pay. - - -	215	9,000		Des. out stk. - - - 9 60			
23	Round sav. M. Mill - -	216	25 78		Starnes Langelier - 186 48			
	Auclaire V. and M. - -	217	400		McManara - - - 212 50			
	" - - -	218	444 68		Patton & Co. - - 300			
30	Bill pay - - -	219	9,900		G. T. R. - - - 760			
Nov. 12	M. Mill sunds. - - -	220	1,972 03		Spearpoint - - - 194 35			
14	Prov. Ins. Co. - - -	221	114 74		Brown ins. and int. 417 32			
Dec. 2	Bill pay. - - -	222	9,900		" M. Av. - - - 400			
	M. Mills sunds. - - -	223	10 20			2,924	57	
	Grey Nuns const. - - -	224	33 33	24	Bill disctd. - - -	1,963	56	
	Auclaire V. and M. - -	225	300	Nov. 4	" - - -	4,966	44	
	Adv. notice decease - -	226	6 50	Dec. 9	" - - -	4,910	82	
	Ins. 3 riv. - - -	227	30	15	" - - -	5,107	26	
	W. Roddon & Co. V. and M. -	228	222 35		Rogers - - - 36			
	Sund. a/c. - - -	229	57 74		Tansey - - - 139 98			
10	A. M. manag. - - -	230	200		" assts. - - - 44 50			
11	Spink M. Mill - - -	231	150		Int. Chan. bds. - - 361 66			
	W. Keeler & Co. - - -	232	75		Starnes Mc.Gib-			
20	Bill pay. - - -	233	3,000		bon - - - 293 14			
1862.					McNamara - - - 87 50			
Jan. 8	Bill pay. - - -	234	8,500		Patton & Co. - - 160 90			
Feb. 15	" - - -	235	2,000		Spearpoint - - - 60			
19	" - - -	236	8,500		G. T. R. - - - 1,035 50			
Mch. 5	" - - -	237	7,900		McNamara - - - 112 50			
12	Spink pay. and bal. M. Mill	238	460 36		Haldam int. - - 1,105			
	Sunds. " - - -	239	308 76			3,436	68	
	" " - - -	240	98 10		Deposit - - -	100		
	A. M. allow. 1 Feb. - -	241	200	1863.				
	G. Browne V. and M. - -	242	140	Jan. 27	Bill disct. - - -	1,986	96	
	A. M. bal. 12 Jan. - -	243	200	Mch. 2	" - - -	4,908	91	
	Ins. M. Mill - - -	244	37		" - - -	3,984	66	
	J. McKenna wages - - -	245	14		Patton & Co. - - 400			
	3 Riv. Prof. sunds. - -	246	168 49		Roddon & Co. - - 967 70			
	V. and M. W. Kensbury -	247	140		Tansey - - - 139 98			
24	Bill pay. - - -	249	3,000		Spearpoint - - - 106 03			
Apr. 1	Ins. M. A. E. M. 1/2 y. ann.	250	2,000		McNamara - - - 276 99			
	J. D. M. 1 Oct. ins. - -	251	1,030		G. T. R. - - - 760			
	" annuity - - -	252	1,000		D. and J. McCarty 476 99			
	J. M. 1 Oct. 61, and int. -	253	824		Richelieu - - - 400			
	J. M. annuity - - -	254	800			3,527	69	
	G. J. M. 1 C. and int. - -	255	824	19	Bill disct. - - -	5,104	27	
				Apr. 1	Late Mrs. M. purchase fur-			
					niture or sale late Hon.			
					J. M. - - -	1,755	80	
				17	Bk. divd. - - -	6,400		
					Browne gard. pro. - -	389	42	
				30	J. M. furniture of Hon. J. M.	800	00	
	Forward - - -		106,858 54		Forward - - -	293,036	51	
1862.				1863.				
Apr. 1	Forward - - -		106,858 54	May 1	Forward - - -	293,036	51	
	G. E. M. annuity - - -	256	800		Roddon & Co. - - 193 75			
	S. E. M. 1 Oct. and int. -	257	618		McNamara - - - 241 25			
	" annuity - - -	258	600			435		
	A. M. 1 Oct. and int. - -	259	618					
	" annuity - - -	260	600	5	Bal. J. Molson furniture -	82	64	
4	Bill payable - - -	261	777 97	Jan. 15	Bill disctd. - - -	4,642	32	
5	Taxes mend. - - -	262	607 42	18	" - - -	4,614	37	
16	Mol. Free Bk. notes - -	263	23	22	" - - -	5,105	26	
19	Jno. Molson - - -	264	824	July 1	Chap. R. R. Co. - - -	1,215		

RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1862.					1863.			
Apr. 30		A. M. allow. 12 Apr.	265	200	July 8	Tansey	146 67	
May 19		Bill pay.	266	8,000		Spearpoint	263 50	
		"	267	4,750		McNamara	212 50	
June 9		"	268	7,900		Damages exp. gas	106 13	
27		"	269	3,000		Rogers const.	36	
July 14		3 Riv. Prop. sund.	270	111		G. T. R.	760	
		M. Mill	271	341 65		Ellis	10	
		V. and M.	272	129 50		Patton & Co.	300	
		Ins. Royal	273	51		M. Mill sales	214	
		Howley G. and H. Jane's prop.	274	6		Div. out bk. stk.	9 60	
		Thomson	275	17 00		Bill discounted	-	2,058 40
		Griffin N. P.	276	17 80	23	Div. Quebec Ins. Co.	-	1,475 55
		Books for estate	277	4 15	25	Starns McGibbon	-	300 10
		Gilmour Const.	278	36 25	Aug. 18	Bill disctd.	-	288 96
		Pew rent	279	25	Sep. 27	"	-	4,614 37
		Note C. and St. L. R. R.	280	880 20	25	"	-	4,222 49
		A. M. manag.	281	200	Oct. 12	Bk. divd.	-	5,106 26
20		Bills pay.	282	4,250	Nov. 21	Div. P. Bs. C. and St. L. R. R.	-	6,400
Aug. 5		A. M. allow.	283	200	24	Bill disctd.	-	155
25		Bill pay.	284	8,000		G. G. Farmer	425 39	4,614 37
Sep. 1		"	285	8,000		Starnes Irving	34 66	
12		"	286	5,400		Moir	403 59	
30		"	287	3,000		McGibbon	269 54	
Oct. 1		J. M. annuity	288	1,000		Langelier	178 92	
		"	289	800		Plunket and Brady	50	
		G. E. M.	290	800		McMahon	85	
		S. E. M.	291	600		Mellieur	143 75	
		A. M.	292	600		M. Mill	84	
24		Bill pay.	293	4,200		Patton & Co.	300 00	
Nov. 4		"	294	5,400		R. R. Advt. Co.	100	
Dec. 9		"	294½	5,000		J. Holden	1,120	
13		V. and M. Auclair	295	279 50		Ins. 3 Riv.	243	
		" bal. sunds	296	12 85		Gilmour	125	
		"	297	459 70		Tansey	160	
		" Auclair	298	442 67				3,722 85
		Doucet and Dorwin	299	11	Dec. 24	Mellieur	-	93 75
		Grey Nuns Const.	300	33 33		Bill disct.	-	4,221 66
		Gds. Pendants	301	6 00	28	"	-	5,106 26
		Lauvière a/c.	302	54 50	1864.	Patton & Co.	-	100
		E. Hornier	303	26 80	Jan. 9	Rogers const.	36	
		Short chq. ck. Ox. 294	304	50		Mellieur	150	
		Auclair V. and M.	305	282 80		Patton & Co.	200	
		V. and M. Auclair &c.	306	898 80		Gilmour	83 32	
		"	307	524 02		Tansey	53 35	
		"	308	870 05		J. D. M. a/c. furn.	22 45	
		M. Mill sund.	309	306 69		Plunkett and Brady	50	
		3 Rivers Prof. Houghton	310	347 82		Richelieu Co.	400	
		G. Brown services	311	100		Out. bk. div.	9 60	
		Insurance	312	222		Shaw Bros. furn.	43 45	
					15	Thos. Molson	-	1,048 17
1863.						V. M.	3,318 27	
Jan. 27		Bill pay.	313	2,000		W. Molson V. M.	2,293 27	
Mch. 2		M. Mill sund.	314	302 70		Bill disct.	-	5,611 54
		V. and M. Auclair	315	878 40		"	-	5,548 15
		A. McGibbon	316	21 35		"	-	4,616 17
		Assessments	317	602 72		"	-	4,221 66
					Feb. 24	"	-	5,105 26
					Mch. 28	"	-	6,400
					31	Bk. divd.	-	
					Apr. 1	Pref. stk.	750	
							310	
								1,060
		Forward		263,975 18		Forward		384,282 07

		Expenditure.	No.	Amount.			Receipts.	Amount.
1863.		Bt. forward - -	—	263,975 18	1864.		Bt. forward - -	384,282 07
Mar. 12		A. M. allow. 12 Jan. - -	318	400	Apr. 1		Gilmour - - 160 32	
		Mrs. M. " 1 Feb. - -	319	200			Tansey - - 155 20	
		Pew rent C. C. C. - -	320	25			McMahon - - 85	
		Mol. Bk. Com. R. R. bds. - -	321	50			Hogan and Penn - 48	
		Bill pay. - -	322	2,000			Int. Corp. bds. - 60	
		Abbott and Dorman - -	323	18 65			Patton & Co. - 365 83	
		Bill pay. - -	324	2,328			Plunket and Brady 68 82	
		" - -	325	5,000			Mellieur & Co. - 100	
18		" - -	326	5,200				1,043 17
31		Mol. the Bk. bills - -	327	61 95	18		Bill disctd. - -	5,548 15
Apr. 1		J. D. M. annuity - -	328	1,000	May 6		" - -	3,927 12
		J. M. " - -	329	800	27		" - -	4,614 37
		G. E. M. " - -	330	800	31		Millieur - - 93 75	
		S. E. M. " - -	331	600			Tansey - - 53 35	
		A. M. " - -	332	600			Benson Son - - 16	
		Bill pay. - -	333	4,000			Gilmour - - 83 32	
June 15		34 y. annuity Mrs. Molson - -	334	372 60				246 42
		Bill pay. - -	335	5,000			Less - -	6
18		" - -	336	4,721 98				246 36
22		" - -	337	5,200	June 17		Bill disctd. - -	4,908 91
26		V. and M. sund. a/c. - -	338	372	July 1		" - -	4,221 66
		G. S. Jas. prop. D. McN. - -	339	800	4		" - -	5,105 26
		" sund. - -	340	80 37	9		H. Starnes Irving - 252	
		Insurance - -	341	109 75			" " int. 13 23	
July 7		3 Riv. Prof. sund. - -	342	1,053 46				532 33
		M. Mill - -	343	51 78	20		J. M. McAvenue - -	240
		Int. C. and St. L. R. R. Bds. - -	344	375	21		Bill disctd. - -	5,547 07
		3 Riv. prop. exp. H. M. and G. B. - -	345	5 50	Aug. 9		" - -	3,927 12
		Telegrams &c. - -	346	5 45	27		R. Harrower - - 800	
		Reps. Gt. St. Jas. prop. - -	347	25 03			And int. - - 156 53	
		Com. St. propty. - -	348	74 55				956 53
		Gt. St. Jas. prop. to McD. - -	349	1,200	30		Bill disctd. - -	4,614 38
13		A. M. allow. manag. - -	350	400	Sep. 20		Holden instl. and int. - -	1,060
25		Pew rent C. C. C. - -	351	33 33	Oct. 20		M. Mill lumber - -	522 28
		3 Riv. prop. T. G. J. - -	352	250			" - -	911 71
25		G. Brown Archt. - -	353	80	Oct. 1		Bill disctd. - -	3,927 89
Aug. 18		Bill pay. - -	354	4,700			McMahon - - 255	
Sep. 21		" - -	355	4,700			Gilmour - - 166 44	
25		" - -	356	5,200			" - - 41 66	
30		" - -	357	21			Tansey - - 320 10	
Oct. 1		Mol. Free Bk. bills - -	358	1,500			Millieur - - 193 75	
		Bill pay. - -	359	800			Plunket and Brady 50	
		J. M. annuity - -	360	600			Patton & Co. - 300	
		S. E. M. " - -	361	800			Beard & Co. - 300	
		G. E. M. " - -	362	1,000			Brown a/c. garden lot - 367 95	
		J. D. M. " - -	363	600			Div. Que. Ins. Co. - 247	
		A. M. " - -	364	1,200			R. Thomas - - 118 82	
Nov. 21		Gt. St. Jas. prop. D. McN. - -	364	1,200			Starnes and Lange-lier - 171 36	
		Bill pay. - -	365	4,700			W. Shanby - - 318 82	
23		A. M. manag. - -	366	200			Rogers int. - - 36	
		M. Mill sunds. - -	367	53 40			Starnes and Mc Laren - 273 48	
		3 Riv. prop. - -	368	967 21			M. Mill Keeler - 176 35	
		Sund. a/c. - -	369	292 38			Ont. Bk. div. - 9 60	
		V. and M. sunds. - -	370	45 50			European Ins. Co. - 228 71	
		Gt. St. Jas. prop. - -	371	3,529 32			Error dif. 31 May - 6	
Dec. 24		Bill pay. - -	372	4,300				3,575 30
28		" - -	373	5,200			Bank divds. - -	6,400
1864.							Int. pret. Stk. Co. and St. L. R. R. - -	500
Jan. 15		V. and M. sunds. - -	374	1,005 02				
		3 bills pay. - -	375	7,290				
		V. and M. cemetery lots - -	376	1,931 20				
		" Spriggins a/c. - -	377	316 71				
		A. M. manag. - -	378	200				

RECORD.

No. 8.

Final Statement of Account of William and Alexander Molson, &c.

—continued.

RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1864.	Jan. 15	Sundry a/c. - - -	379	59 13	1864.	Oct. 1	Bill disctd. - - -	3,927 13
		G. Browne archt. - - -	380	200		5	Starnes McGibbon - 256 56	
							Int. - - - 1 12	257 68
						7	Int. C. and St. L. R. R. bds.	310
							Bill disctd. - - -	4,908 91
						18	Int. M. Avenue - - -	240
						24	Bill disctd. - - -	5,399 80
						27	T. G. Farmer - - -	200
						Nov. 12	Patton & Co. - 300	
							European Ins. Co. - 128 71	428 71
		Forward - - -	—	358,680 45				462,283 91
1864.		Bt. forward - - -	—	358,680 45	1864.		Bt. forward - - -	462,283 91
Jan. 15		Tansey damages - - -	381	33 25	Nov. 14		Bill disctd. - - -	3,729 31
Feb. 24		Bill payable - - -	382	4,700	Dec. 3		Gilmour - - - 41 66	
		Gt. St. Jas. Prov. sund. - - -	383	53 89			Tansey - - - 53 35	95 01
Mch. 28		M. Mill sund. - - -	384	233 82			Bill disctd. - - -	4,517 96
		Assessment - - -	385	500 30		26	Gilmour - - - 41 66	
		3 Riv. Ice break. - - -	386	200			Tansey - - - 53 35	
		Gt. St. Jas. P. and D. Men. - - -	387	2,000 00			Mahon - - - 85	180 01
		Pew rent C. C. C. - - -	388	33 33				
		Bill pay. - - -	389	4,300				
	31	Mrs. Molson allow. - - -	390	200	1865.	Jan. 7	Bill disctd. - - -	3,927 89
		Bill pay. - - -	391	5,200			Beard & Co. - - -	300
Apl. 1		J. M. annuity - - -	392	800			Bill disctd. - - -	3,928 66
		S. E. M. " - - -	393	600		10	European Ins. Co. - - -	300
		G. E. M. " - - -	393½	800			Bill disctd. - - -	4,910 82
		J. D. M. " - - -	394	1,000		27	" - - -	5,400 85
		A. M. " - - -	395	600				
		Molsons Free Bk. bills - - -	397	25	Feb. 3		G. Browne M. A. - 478	
		Int. bonds Mol. Bk. - - -	398	375			Tamsey - - - 208 55	
	18	Bill pay. - - -	399	5,650			Patton & Co. - 415	
May 6		Mrs. A. M. - - -	400	200			Gilmour - - - 83 32	
		A. M. manag. - - -	401	200			Starnes Wand. - 664 10	1,848 97
		D. McNeven - - -	402	4,000		15	Molson - - - 85	
	27	Bill pay. - - -	403	4,700			Tansey - - - 53 35	
June 17		" and int. - - -	404	4,961 97			Gilmour - - - 41 66	180 01
July 1		" " - - -	405	4,300			Bill disctd. - - -	3,634 72
4		" " - - -	406	5,200		18	M. Mill farm rent - - -	37 50
21		" " - - -	407	5,650	Mar. 6		Beard & Co. - - -	300
Aug. 9		" " - - -	408	4,000			Bill disctd. - - -	4,221 66
30		" " - - -	409	4,700	17		G. Browne - - - 528	
Sep. 23		M. Mill sund. - - -	410	8 30			European - - - 150	678
		3 Riv. prop. - - -	411	44 80		27	Bill disctd. - - -	3,927 12
		Insurance - - -	412	178 50	Apr. 1		Bk. dividend - - - 64 00	
		Gt. St. Jas. prop. sund. - - -	413	74 22			C. and St. L. R. R.	
		G. Browne Archt. - - -	414	405			int. - - - 3 10	
		Sundries - - -	415	35 94			" " - 5 00	7,210
		Mrs. A. M. allow. - - -	416	200	3		Int. M. Avenue - - -	240
		A. M. " - - -	417	200	5		Bill disctd. - - -	3,436 91
	20	D. McNeven - - -	418	4,000	13		" - - -	4,908 90
		Bill pay. - - -	419	5,000	May 1		" - - -	361 51
	30	Sunds. Gt. St. Jas. prop - - -	420	26 75	15		Richelieu Co. - - -	3,436 33
		Watchman - - -	421	67 12	23		Bill disctd. - - -	37 50
		3 Riv. prop. a/c. - - -	422	252 97	June 9		M. Mill farm rent. - - -	300
Oct. 1		J. M. annuity - - -	423	800			Patton & Co. - - -	3,927 13
		S. E. M. " - - -	424	600			Bill disctd. - - -	
		G. E. M. " - - -	425	800				
		J. D. M. " - - -	426	1,000				
		A. M. " - - -	427	600				
		Int. C. and St. L. R. R. stk. - - -	428	250				
	4	Bill pay. - - -	430	4,300				

RECORD.  
No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

Expenditure.			No.	Amount.	Receipts.			Amount.
1864.					1865.			
Oct. 7	Bill Pay.	- - -	431	5,200	June 30	Gilmour - - -	109 51	
24	"	- - -	432	5,650		Tansey - - -	53 35	
27	Bal. Haldam Prp.	- - -	433	2,511 01		Scutthorp - - -	80	
	D. McNeven	- - -	434	1,925 27				242 86
Nov. 10	Pew Rent C. C. C.	- - -	435	33 33		Bill disctd. - - -	- - -	3,730 77
12	Bill Pay.	- - -	436	4,000	July 13	" - - -	- - -	3,239 88
	Refund Europe Ins. Co.	- - -	437	9 56	17	" - - -	- - -	4,467 10
16	Ins. 3 Rivers	- - -	438	30	Aug. 4	" - - -	- - -	4,712 55
23	Easton Notary	- - -	439	24 85	21	Hon. C. Wilson - -	342 40	
Dec. 1	C. Garth Gt. Sp. Prop.	- - -	440	436 60		Ins. M. Ave. - - -	27	
3	Bill pay.	- - -	441	4,700		Rogers int. - - -	36	
	Bill pay.	- - -	442	4,000		Gilmour - - -	41 66	
						Tansey - - -	53 35	
1865.								500 41
Jan. 6	" - - -	- - -	443	4,000		Bill disctd. - - -	- - -	3,239 88
10	" - - -	- - -	444	5,000	Sep. 9	M. Mill Farm Rent - -	- - -	37 50
						W. Molson W. M. - -	23 98	
						Gilmour - - -	83 32	
						Tansey - - -	106 70	
						Scutthorp - - -	40	
						Molson - - -	85	
						Beard & Co. - - -	300	
						Davidson & Co. - -	250	
						Starnes and Lange- lier - - -	163 80	
						European - - -	150	
						C. R. R. R. - - -	143 75	
								1,346 55
	Forward	- - -	-	480,261 23		Forward	- - -	554,741 64
1865.	Bt. Forward	- - -	-	480,261 23	1865.	Bt. Forward	- - -	554,741 64
Jan. 27	Bill Pay.	- - -	445	5,500	Sep. 12	Gilmour - - -	83 32	
Feb. 2	Mrs. M. by allow.	- - -	446	200		Tansey - - -	106 70	
	A. M. 12 Jan.	- - -	447	400		Molson - - -	85	
15	Bill pay.	- - -	448	3,800				275 02
Mch. 6	" - - -	- - -	449	4,600		Bill disctd. - - -	- - -	3,731 50
	Insurance - - -	- - -	450	63				
15	Mol. Free Bk. Bills	- - -	451	13 50	Oct. 2	Bk. Divd. - - -	64 00	
	Sund. Gt. St. Jas. Prop.	- - -	452	86 94		C. and St. L. R. R. Int. - - -	3 10	
16	" Charg. Manag.	- - -	453	23 06		" Bds. - - -	5 00	
	E. Hornier - - -	- - -	454	40				7,210
	Ins. M. Mill - - -	- - -	455	52	3	Bill Disctd. - - -	- - -	3,434 89
27	Bill Pay.	- - -	455 <sup>1</sup> / <sub>2</sub>	4,000	16	" - - -	- - -	2,749
Apl. 1	J. M. Annuity	- - -	456	800	20	" - - -	- - -	4,172 57
	S. E. M. " - - -	- - -	457	600	Nov. 7	" - - -	- - -	4,418 02
	G. E. M. " - - -	- - -	458	800	21	M. Mill Farm Rent - -	- - -	37 50
	J. D. M. " - - -	- - -	459	1,000	24	Beard & Co. - - -	- - -	415
	A. M. " - - -	- - -	460	600		Bill Disctd. - - -	- - -	2,945 35
	W. Sweet Gt. St. Jas. Prop.	- - -	461	33 90	Dec. 15	Patton & Co. - - -	- - -	300
	Assess. 1864 - - -	- - -	462	660 85				
	J. G. Beard & Co. - -	- - -	463	50 63	1866.			
	Ins. C. and St. L. R. R. B.	- - -	464	250	Jan. 8	Bill disctd. - - -	- - -	3,436 90
	V. and M. Spriggins -	- - -	465	83 45		Beard & Co. - - -	- - -	300
10	Bill Pay.	- - -	466	4,000		Bill disctd. - - -	- - -	3,142 93
13	" - - -	- - -	467	5,000	19	McQuirk - - -	- 30	
May 1	" - - -	- - -	468	5,500		C. R. R. R. - - -	213 82	
18	" - - -	- - -	469	3,700		Scutthorp - - -	60	
June 9	" - - -	- - -	470	4,300				303 82
30	" - - -	- - -	471	4,000		Bill disctd. - - -	- - -	2,454 94
July 1	Sundries - - -	- - -	472	83 03	23	Scutthorp - - -	100	
	3 Riv. Prop. - - -	- - -	473	147 82		Patton & Co. - - -	150	
	G. St. Jas. Prop. - -	- - -	474	538 22				250
13	Bill pay. - - -	- - -	475	3,500		Bill disctd. - - -	- - -	3,928 66
17	" - - -	- - -	476	4,570				

**RECORD.**

**No. 8.**

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
*—continued.*

		Expenditure.	No.	Amount.			Receipts.	Amount.
1865.	Aug. 12	A. M. Manag. - - -	477	400	1866.	Feb. 10	Patton & Co - - 150	
	4	Mrs. M. allow. - - -	478	200			Gilmour - - - 83 32	
	21	Bill pay. - - - - -	479	5,000			McQuirk - - - 10	
	Sep. 12	" - - - - -	480	3,500			Tansey - - - 106 70	
	Oct. 2	" - - - - -	481	4,000				350 02
		J. M. Annuity - - -	482	800			Bill disctd. - - -	4,125 09
		S. E. M. " - - - -	483	600		13	M. Mill Farm Rent - - -	25
		G. E. M. " - - - -	484	800		27	Davidson & Co. - 300	
		J. D. M. " - - - -	485	1,000			Scutthorp - - - 60	
		A. M. " - - - - -	486	6,000			McQuirk - - - 10	
		Sundries - - - - -	487	41 17				370
		Gt. St. Jas. Prop. Repairs	488	253 71			Bill disctd. - - -	2,652 37
		Insurance - - - - -	489	264		Mar. 19	R. Wellington M. A. 400	
		Mol. Free Bk. Bills - - -	490	10			Int. - - - 27	
		Ins. C. and St. L. R. R. Bds.	491	250				427
	3	Bill Pay. - - - - -	492	3,800			Bill disctd. - - -	3,141 70
	16	" - - - - -	493	3,300		24	M. Mill Lumber Bds. - - -	500
	20	C. Garth G. St. Jas. Prop.	494	417 49		Apr. 2	C. and St. L. R. R.	
	Nov. 7	Bill pay. - - - - -	495	4,550			Bds. - - - 310	
	24	" - - - - -	496	4,800			500	810
	Dec. 15	" - - - - -	497	3,300				6,400
		" - - - - -	498	3,800		Apr. 11	Bk. Divd. - - - - -	240
1866.	Jan. 8	" - - - - -	499	3,500		25	M. Avenue - - - - -	2,951 68
	19	" - - - - -	500	2,800			Bill Disctd. - - - - -	
	23	" - - - - -	501	4,250			Tansey - - - 266 75	
	Feb. 10	" - - - - -	502	4,500			Gilmour - - - 208 30	
		Mrs. M. Allow Ist. - - -	503	200			Mahon - - - 170	
		A. M. " 12 Jan. - - -	504	400			Divd. Ont. Bk. - - 9 60	
		Gt. St. Jas. Prop. R. Benn	505	924 34			Scutthorp - - - 80	
	15	" J. Murphy - - - - -	506	180 58			Llewellyn & Co. - 40	
								774 65
							Bill disctd. - - - - -	2,161 19
							" - - - - -	3,632 59
						May 14	" - - - - -	3,828 95
						22	M. Mill Farm Rent - - -	25
						30	Bill disctd. - - - - -	2,355 82
						31	Beard & Co. - - - - -	300
						June 12	Ex. prop. A. M. Corp. S.	
							Prop. - - - - -	2,416 15
						22	M. Avenue Instl. and Int.	509 73
							Bill disctd. - - - - -	2,847 17
						July 14	Mahon - - - - 85	
							Llewellyn & Co. - 40	
							Tansey - - - 53 35	
							Gilmour - - - 70	
							Scutthorp - - - 60	
								308 35
		Forward - - - - -		597,778 92			Forward - - - - -	639,400 25
1866.	Feb. 11	Bt. Forward - - - - -		597,778 92	1866.	July 14	Bt. Forward - - - - -	639,400 25
	27	Gt. St. Jas. Prop. J. Simpson	507	450		26	Bill Disctd. - - - - -	2,650 81
	Mch. 6	and others - - - - -	508	3,000		30	Beard & Co. - - - - -	300
	19	Bill Pay. - - - - -	509	53 23			Bill Disctd. - - - - -	1,865 39
	20	Hon. J. J. C. Abbott - - -	510	3,500			Tansey - - - 99 35	
	23	Bill Pay. - - - - -	511	52			Gilmour - - - 111 41	
		Ins. M. Mill - - - - -	512	14 93			Spinney - - - 80	
		Bill stamp & Co. - - -	513	33 33			Tingley - - - 34	
		Pew Rent C. C. C. - - -	514	6				324 76
		Mol. Free Bk. Bills - - -	515	138 91			Bill disctd. - - - - -	3,338 06
		3 Riv. Prop. Ins. Rep. - - -	516	151 80		Aug. 17	M. Avenue - - - 240	
		Gt. St. Jas. Prop. Sund.	517	257 31			Gilmour - - - 70	
		" St. Lariviere a/c.	518	800		25		310
	Apr. 2	J. M. Annuity - - - - -	519	600		Sep. 3	M. Mill Farm Rent - - -	25
		S. E. M. " - - - - -					Richelieu Co. - - -	400



		Expenditure.		No.	Amount.	Receipts.		Amount.
1866.						1866.		
April 2	G. E. M. Annuity	-	-	520	800	Aug. 27	Bill discounted	- - 3,534 42
	J. D. M.	"	"	521	1,000	Sep. 3	"	- - 2,045 92
	A. M.	"	"	522	600	25	Patton & Co.	- - 300
	Assessts. 1865	-	-	523	775 75		Bill disctd.	- - 2,519 66
	" Spl. St. Peter St.	-	-	524	112 20	Oct. 1	Bk. Divd.	- - 6,400
	"	-	-	525	43 33		C. and St. L. R. R.	- -
	Int. C. and St. L. R. R. Bds.	-	-	526	250		Bds.	- - 810
	Gt. St. Jas. Prop. payette a/c.	-	-	527	3			7,210
	Bill Pay. and Int.	-	-	528	103 68	8	J. G. Farmer	- 100
11	"	-	-	529	3,200		"	- 182 64
23	"	-	-	530	2,500		Scutthorp	- 100
26	"	-	-	531	4,000			382 64
	G. Brown Arch.	-	-	532	200			
May 14	Bill Pay.	-	-	533	4,200	17	M. Av. R. Min.	- 15
	J. J. Brown a/c.	-	-	534	149		Div. Ont. Bk.	- 9 60
22	Ins. G. St. Jas. prop.	-	-	535	84		Tansey	- 106 70
28	G. Browne in full	-	-	536	499 55		Div. St. Michel	- -
30	Bill pay.	-	-	536½	2,700		Rd.	- 17 50
June 22	"	-	-	537	3,700		Gilmour	- 70
27	Gt. St. Jas. Prop. Repairs	-	-	538	36 60		Rogers Int.	- 36
July 2	" D. McNeven	-	-	539	604 25		Starnes Langelier	157 28
4	Corp. Widening Sher. St.	-	-	540	2,416 15			412 08
5	Bill Pay and Int.	-	-	541	341 09		Bill discounted	- - 2,324 24
14	"	-	-	542	3,000	29	Devany	- - 300
26	"	-	-	560	2,200		Bill discounted	- - 1,550 03
30	"	-	-	561	3,700	Nov. 2	Tansey	- 53 35
	A. M. allow. 1st.	-	-	562	400		M. Avenue	- 240
Aug. 1	Mrs. A. M. ,, 1st.	-	-	563	200			293 35
8	Ins. Gt. St. Jas. Prop.	-	-	564	140		Bill disctd.	- - 3,019 33
17	Bill pay.	-	-	565	3,900	20	St. Michel Rd. Sund.	- - 345 04
Sep. 3	"	-	-	566	2,400		Bill disctd.	- - 3,214 10
17	Gt. St. Jas. Prop. Rep.	-	-	567	42 41	30	M. Mill farm rent	- - 25
	Pew Rent C. C. C.	-	-	568	56 43	Dec. 6	Beard & Co.	- 372
	Gilmour Const.	-	-	569	36 25		Shaw Bros.	- 350
	Ins. Rep. 3 Riv. Prop.	-	-	570	93		J. G. Farmer	- 372 06
	St. Amps. etc.	-	-	571	6 27		Patton & Co.	- 1,015
25	Bill Pay.	-	-	572	2,900		Mrs. Walton	- 187 50
Oct. 1	J. M. Annuity	-	-	573	800		Scutthorp	- 35
	S. E. M.	-	-	574	600		Gilmour	- 140
	G. E. M.	-	-	575	800		Reekie	- 40
	J. D. M.	-	-	576	1,000		Tansey	- 53 35
	A. M.	-	-	577	600		Scutthorp	- 75
22	Ramsey and Son a/c.	-	-	578	6 81		Gilmour	- 70
	Int. C. and St. L. R. Bds.	-	-	579	250			2,709 91
8	Bill Pay.	-	-	580	2,757 27	29	Bill disctd.	- - 1,772 70
8	"	-	-	582	385 62		Gilmour	- 70
17	"	-	-	583	2,700		Walton	- 187 50
29	"	-	-	584	1,900		Tansey	- 53 35
Nov. 2	"	-	-	585	3,400			310 85
30	"	-	-	586	3,600		Bill disctd.	- - 2,247 28
						1867.		
						Jan. 11	Devany	- - 300
							Tansey	- 53 35
							Reekie	- 40
						21	Davidson	- - 770 77
							Bill discounted	- - 2,063 76
						Feb. 1	"	- - 1,270 51
							Davidson & Co.	- - 1,000
						5	Bill disctd.	- - 2,739 25
						12	M. Mill farm rent	- - 25
						23	Bill disctd.	- - 4,485 44
						Forward		- - 695,878 88

RECORD.  
No. 8.  
Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

## RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1866.		Bt. Forward - - -	—	672,612 09	1867.		Bt. Forward - - -	695,878 88
Dec. 6		Bill payable - - -	587	2,100	Apr. 1		Bk. dividend - - -	640
28		" - - - - -	588	2,600			Int. C. and St. L. R. R. - - -	810
1867.		" " in Reductment - - -	589	379 82				7,200
Jan. 11		Assess. 1866 - - -	590	846 76			Bill disctd. - - -	3,294 37
12		Bill pay. - - - - -	591	2,400	May 4		Walton - - - - -	187 50
21		" - - - - -	592	1,600			Scutthorp - - - - -	75
Feb. 1		" - - - - -	593	3,100			Reekie - - - - -	40
5		Gt. St. Jas. Prop. Repairs - - -	594	157 50			Scutthorp - - - - -	95 83
14		B. and S. H. Thompson - - -	595	144 13				398 38
15		Bill pay. - - - - -	596	3,300			Bill discounted - - -	3,611 30
23		" - - - - -	597	1,800			M. Mill farm rent - - -	19
26		A. M. allow. 11 Jan. - - -	598	400	June 4		Turcotte - - - - -	233
		Mrs. " 1st. - - - - -	599	200			Tansey - - - - -	53 35
Mch. 23		Mol. Free Bk. Bills - - -	600	18 50			Spinney - - - - -	45
		Prowse Bros. - - - - -	601	55 40			Gilmour - - - - -	70
29		Sundries - - - - -	602	194 93			St. Michel Ry. - - -	40 58
Apr. 1		J. D. M. Annuity - - -	603	1,000			Walton - - - - -	67 09
		J. M. - - - - -	604	800			Richelieu Co. - - -	400 00
		Mrs. G. E. M. - - - - -	605	800			Devany - - - - -	415
		S. E. M. - - - - -	606	600				1,324 02
		A. M. - - - - -	607	600			Bill disctd. - - - - -	4,199 28
		Bill pay. - - - - -	608	2,300	Aug. 5		Lyman - - - - -	600
		" - - - - -	609	2,100			Devany - - - - -	300
		Ony int. on \$10,000 - - -	610	250			Reekie - - - - -	40
May 15		Bill pay. in Reduct. - - -	611	410 01			M. Avenue - - - - -	240
May 4		" - - - - -	612	1,300				1,180
		" - - - - -	613	2,800	Sep. 7		S. Chaput Int. - - -	560
		Ints. Prov. Ins. Co. - - -	614	45			Bill disctd. - - - - -	3,027 38
18		M. M. Instal. M. Mill - - -	615	125				3,850 08
21		Ins. Gt. St. Jas. Prop. - - -	616	84	Oct. 1		Int. C. and St. L. R. R. - - -	500
28		Gilmour Const. - - - - -	617	36 25			Bk. Divd. - - - - -	6,400
June 4		Bill pay. - - - - -	618	4,600			Int. C. and St. L. R. R. - - -	310
July 12		Prov. Ins. Co. - - - - -	619	45			Walton - - - - -	187 50
18		Bill pay. in Reduct. - - -	620	370 26			T. G. Farmer - - - - -	100
Aug. 5		" - - - - -	621	3,400			Div. Ont. Bk. - - -	38 40
		Mrs. A. M. allow. 1st. - - -	622	200			Starnes Langelier - - -	148 68
7		Inst. Gt. St. Jas. Prop. - - -	623	140				474 58
20		3 " Rivers - - - - -	624	30			Bill disctd. - - - - -	3,606 68
Sep. 4		Pew Rent C. C. C. - - -	625	33 33			Bill disctd. - - - - -	6,500
7		Bill Pay. - - - - -	626	4,300	Nov. 8		Scutthorp - - - - -	106 25
		A. M. Allow. 12 July - - -	627	400			Farmer - - - - -	100
		Coal Gt. St. Jas. Prop. - - -	628	39 11			Walton - - - - -	187 50
16		Inst. on \$10,000 - - -	629	231 50			Lyman - - - - -	300
		Bill pay. - - - - -	630	10,000				693 75
18		Gt. St. Jas. Prop. R. Mitchell - - -	631	26	Dec. 18		Bill disctd. - - - - -	2,734 41
Oct. 1		J. D. M. Annuity - - -	632	1,000			L. Chaput Ins. and Int. - - -	2,560
		J. M. - - - - -	633	800	1868.			
		Mrs. G. E. M. - - - - -	634	800	Jan. 13		Devany - - - - -	400
		S. E. M. - - - - -	635	600			Bill disctd. - - - - -	7,326 16
		A. M. - - - - -	636	600			Bill L. Chaput f. sav. B. - - -	489 68
		Bill Pay. - - - - -	637	3,750	Feb. 4		Bill disctd. - - - - -	3,105 90
Nov. 8		" - - - - -	638	3,100			Reekie - - - - -	40
14		C. Garth Gt. St. Jas. Prop. - - -	639	140			Scutthorp - - - - -	106 25
18		In. 3 Riv. - - - - -	640	30			Walton - - - - -	187 50
Dec. 6		Crevier and Roy, et al. - - -	641	210 52			Lyman - - - - -	415
1864.							St. Michel R's. - - -	56 20
13		Payette and Renault - - -	642	3			Reekie - - - - -	52
24		J. Browne & Co. - - -	643	7 50				3,965 85
Jan. 4		Crevier Roy, et al. - - -	644	79 47	6		Devaney - - - - -	539 75
13		Pew Rent C. C. C. - - -	645	33 33			Bill disctd. - - - - -	3,634
		Bill Pay. - - - - -	646	10,000				

RECORD.  
No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1864.					1868.			
Feb. 4	Bill Pay.	- - - -	647	3,935 70	Jan. 11	Walton	- - 67 09	
6	"	- - - -	648	4,000		Farmer	- - 70	
	Rodden and Co. V. and M.	- - - -	649	4		M. Avenue	- - 240	
						Scutthorp	- - 106 25	
						Walton	- - 187 50	
						Reekie	- - 40	
								711 44
						Bill disctd.	- - - -	1,953 20
					Mch.	Devany	- - 400	
						Lyman	- - 300	
								700
						Bill disctd.	- - - -	2,926 03
					5	M. Mill Lumber	- - - -	124
	Forward - - -	- - -	-	758,068 11		Forward - - -	- - -	771,102 17
1868.	Bt. Forward - - -	- - -	-	758,068 11	1868.	Bt. Forward - - -	- - -	771,102 17
Feb. 7	Gillespie Gt. St. Jas. Prop.	- - - -	650	35 50	Apr. 1	M. Mill Sale	- - - -	735
11	Bill pay.	- - - -	651	2,800		Bank Divd.	- - 6,400	
24	Water Rates Gt. St. J. St.	- - - -	652	10 05		C. and St. L. R.	- - - -	
29	Mol. Free Bk. Bills	- - - -	653	3 50		R. Rent	- - 500	
Mch. 4	Bill Pay.	- - - -	654	3,750		"	- - 310	
Apr. 1	Mrs. M. Allow. 1 Feb.	- - - -	655	200				7,210
	A. M. " 12 Jan.	- - - -	656	400		M. Mill Lumber	- - - -	122 50
	J. D. M. Annuity	- - - -	657	1,000	16	Bill disctd.	- - - -	4,882 87
	J. M.	- - - -	658	800	May 4	J. G. Farmer	- - - -	159 66
	Mrs. G. E. M.	- - - -	659	800	7	Devaney	- - 400	
	S. E. M.	- - - -	660	600		Scutthorp	- - 106 25	
	A. M.	- - - -	661	600		Lyman	- - 330	
	City Ass. Subsept.	- - - -	662	10		Walton	- - 187 50	
	Stamps to date	- - - -	663	21 95				993 75
2	Sheriff Suit J. Holdem	- - - -	664	46		Bill Disctd.	- - - -	2,148 47
15	J. Watson & Co. St. Jas.	- - - -	665	3	9	Lyman	- - 300	
16	Bill Pay - - -	- - - -	666	7,500		Larkin	- - 40	
24	Spcl. Assess. - - -	- - - -	667	407 94		Farmer	- - 60	
	Assess 1867 - - -	- - - -	668	669 90		Reekie	- - 40	
Mch. 7	Bill pay.	- - - -	669	3,200		St. Avenue	- - 240	
9	"	- - - -	670	6,700		Thomas	- - 20	
16	Exp. J. D. M. to Eng.	- - - -	671	1,026 82				700
21	Ins. Gt. St. Jas. Prop.	- - - -	672	84		Bill disctd.	- - - -	2,731 20
June 4	Gilmour const.	- - - -	673	36 25	June 9	J. G. Farmer	- - - -	202 34
6	J. Watson & Co. Gt. St. Jas.	- - - -	674	6	11	Int. M. Mill Sale	- - - -	500
11	Bill pay.	- - - -	675	3,000	12	Bill disctd.	- - - -	4,376 83
	"	- - - -	676	3,000	July 20	J. G. Farmer	- - - -	4,861 92
25	Pew Rent - - -	- - - -	677	33 33	Aug. 4	Patton & Co.	- - - -	414 21
July 20	Bill payable - - -	- - - -	678	5,000	10	Bill disctd.	- - - -	300
Aug. 7	Water Rates Gt. St. Jas.	- - - -	679	5 50	Oct. 1	Bank Div. - - -	- - 6,400	4,810 73
8	Mrs. M. allow. 1st.	- - - -	680	200		Int. C. and St. L.	- - - -	
	A. M. Allow. 12 July	- - - -	681	400		R. R.	- - 810	
	Ins. Gt. St. James St. Prop.	- - - -	682	140				7,210
10	Bill pay.	- - - -	683	2,200		Bill Dis.	- - - -	1,951 67
	Bill pay.	- - - -	684	3,000	Nov. 13	Mills Ins. Co.	- - 96	
	J. J. C. Abbott	- - - -	685	90 33		Garvier	- - 86	
20	T. Browne	- - - -	686	62		Div. Ont. Bk.	- - 36	
	Marriage Cert. Hon. J. M.	- - - -	687	13 75		L. Chaput int.	- - 9 60	
24	Ins. 3 Riv.	- - - -	688	30		Scutthorp	- - 490	
Oct. 1	J. D. M. Annuity	- - - -	689	1,000		Scutthorp	- - 106 25	
	J. M.	- - - -	690	800		Walton	- - 106 31	
	Mrs. G. E. M.	- - - -	691	800				930 16
	S. E. M.	- - - -	692	600		Bill disct.	- - - -	3,919 45
	A. M.	- - - -	693	600		"	- - - -	4,172 57
	Bill pay.	- - - -	694	4,500		M. Mill Lumber	- - - -	184 71
9	Mol. Free Bk. Bills	- - - -	695	17	23			
	Bill Stamps to date	- - - -	696	8 73	26	L. Chaput Ins. and Int.	- - - -	2,490
31	Crevier Roy. St. Jas.	- - - -	697	128 57	Dec. 13			

RECORD.

No. 8.  
Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1868.	Nov. 6	Pew Rent C. C. C.	698	33 33	1869.	Feb. 11	Devaney -	400
	13	Bill pay.	699	4,900			Quebec Ins. Co. -	228
	14	Ins. 3 Riv.	700	30				628
								1,175 55
1869.	23	Bill pay.	701	5,000		26	Bill disctd. -	-
	Feb. 4	"	702	2,000			Lyman -	715
	11	C. Garth Gt. St. Jas. St.	703	7			M. Avenue -	240
	26	Bill pay.	704	4,000			Devaney -	539 75
		"	705	4,250			Walton -	69 09
	Mar. 9	Clearing roof Gt. St. Jas. St.	706	2			Scutthorp -	106 25
	30	Mrs. M. Allow.	707	200			Walton -	187 50
		A. M.	708	400		Mar. 1	Bill Disctd. -	-
		½ Regist. Notes	709	83 50			Sale Dundas Prop. -	-
		J. D. M. Annuity	710	1,000		Apr. 1	Int. M. Mill Sale -	105
		J. D. M.	711	800			Reekie -	132
		Mrs. G. E. M. Annuity	712	800			St. Michel Rd. -	8 63
							Starnes Langelier -	143 06
							Div. Prov. Ins. Co. -	9 90
							St. Michel Rd. -	28 23
							Walton -	268 69
							Est. T. Molson -	11 25
							Scutthorp -	106 25
							W. Thomas -	46
							T. G. Farmer -	100
							Int. M. Mill -	105
								1,855 59
								6,457 62
								1,200
		Forward		833,914 06				
1869.	Apl. 1	Bt. Forward		833,914 06	1869.	Apr. 20	Bt. forward	
		S. E. M. Annuity	713	600			Fire Ins. Co. -	96
		A. M.	714	600			R. T. Stewart -	55
		Bill pay	715	6,500			McQuirk -	60
	May 8	"	716	1,500			R. W. Brown -	131 04
		Crevier Roy. Gt. St. Jas.	717	239 22			J. C. Dole -	36
	21	Insurance	718	84			N. Larkin -	40
	June 2	Gilmour Const.	719	36 25			W. Peardon -	183 30
	8	Pew Rent C. C. C.	720	33 33			Rogers int. -	36
	July 12	A. M. Allow.	721	400			W. Thomas -	66
	Aug. 1	Mrs. M.	722	200			E. H. Parsons -	48
	4	C. Garth's Gt. St. Jas.	723	2 50			Bayley -	37 50
	11	Insurance	724	140			T. G. Farmer -	100
		Jane's Guard.	725	9 30			G. T. R. -	304
	24	Ins. 3 Riv.	726	30			Devaney -	400
	27	J. J. C. Abbott	727	5 50			M. Avenue -	240
	Oct. 1	J. D. M. Annuity	728	1,000				1,832 84
		J. M.	729	800		May 25	J. Patton & Co. -	-
		Mrs. G. E. M.	730	800		June 29	Div. Ont. Bk. -	19 20
		S. E. M.	731	600			Starnes Moir -	104 93
		A. M.	731	600			Scutthorp -	106 25
		Prov. Ins. Co.	732	22 50			Walton -	187 50
	13	Assess 1868-69	734	1,521 14			Reekie -	40
		A. M. Allow. to 12	735	200			Bayley -	12 50
	19	Crevier Roy. Gt. St. Jas.	736	35 60			R. W. Brown -	18
	Nov. 12	Ins. 3 Riv.	737	30			Lyman -	300
	17	Pew Rent C. C. C.	738	33 33			Thomas -	20
	Dec. 21	Coal Gt. St. Jas. Prop.	739	25 24			Inst. M. Mill -	500
							Chaput int. -	420
							Int. City Bds. -	720
1870.	29	Mol. Free Bk. Bills	740	15				2,508 38
	Jan. 31	A. M. Allow. 12	741	200		Aug. 3	T. G. Farmer -	200
	Feb. 10	Mrs. M.	742	200		14	Patton & Co. -	100
		Prov. Ins. Co.	743	22 50		Sep. 8	"	258 58

RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

		Expenditure.	No.	Amount.			Receipts.	Amount.
1870.					1869.			
Feb. 12		Crevier Gt. St. Jas. - - -	744	17 70	Sep. 13	Patton & Co. - - -	250	
Mch. 4		C. Garth - - -	745	7 70		Devaney - - -	400	
30		Prov. Ins. Co. - - -	746	22 50		Scutthorp - - -	106 25	
Apr. 1		J. D. M. Annuity - - -	747	1,800		Walter - - -	187 50	
		J. M. " - - -	748	600				943 75
		Mrs. G. E. M. " - - -	749	800	30	M. Mill Lumber - - -	-	77 41
		A. M. " - - -	750	600	Oct. 1	Bank Div. 6/ - - -	4,800	
		S. E. M. " - - -	751	600		C. and St. L. R. - - -		
		Stationery, Postage &c. - - -	752	122 69		R. Int. - - -	810	
May 12		Pew Rent C. C. C. - - -	753	33 33				5,610
21		Ins. Gt. St. Jas. Prof. - - -	754	84	13	Brown - - -	-	36
		A. M. Allow. 12 Ap. - - -	755	200	16	Patton & Co. - - -	-	300
		G. Brown a/c Gt. St. Jas. - - -	756	21	27	" - - -	-	100
June 24		Rep. Field - - -	757	2 50	Nov. 15	Lyman - - -	-	415
July 9		Prov. Ins. Co. - - -	758	22 50	17	Patton & Co. - - -	-	100
Aug. 8		Ins. Gt. St. Jas. Prof. - - -	759	140	19	M. Mill Lumber - - -	-	25
Aug. 10		City Assess. - - -	760	5	29	McQuick - - -	-	50
24		Ins. 3 Riv. - - -	761	30	Dec. 3	Grant - - -	-	52
30		A. M. Allow. 12 July - - -	762	200	24	Patton & Co. - - -	-	100
		Mrs. A. M. 1 Aug. - - -	763	200				
Sep. 1		Mol. Free Bk. Bills - - -	764	49	1870.			
Oct. 1		J. D. M. Annuity - - -	765	1,000	Feb. 2	Bayley - - -	-	12 50
		J. M. " - - -	766	800	3	Patton & Co. - - -	-	100
		Mrs. G. E. M. " - - -	767	800	5	Walton - - -	-	187 50
		S. E. M. " - - -	768	600	17	Devaney - - -	-	400
		A. M. " - - -	769	600	Mar. 19	Farmer - - -	-	200
		" Allow. 12 Oct. - - -	770	200	29	Grant - - -	-	40
3		Assess 1870 - - -	771	697 50	Apl. 1	Bk. Div. 4/ - - -	3,200	
14		Gilmour Const. - - -	772	36 25		C. and St. L. R. R. - - -	810	
28		Prov. Ins. Co. - - -	773	22 50				4,010
Nov. 1		Coal Gt. St. Jas. Co. - - -	774	44 36	26	Lyman - - -	-	300
2		J. J. C. Abbott - - -	775	14 35	May 2	Bayley - - -	-	12 50
					7	Lyman - - -	-	300
					14	Walton - - -	-	187 50
					June 1	Grant - - -	-	40
					Aug. 6	Bayley - - -	-	12 50
						Thomas - - -	-	20
						Lyman - - -	-	300
		Forward - - -		860,172 25		Forward - - -		865,460 42
1870.					1870.			
Nov. 12		Bt. forward - - -		860,172 25	Aug. 30	Walton - - -	-	185 50
15		Ins. 3 Rivers - - -	776	30	Sep. 1	Bayley - - -	-	4 17
Dec. 2		Pew Rent C. C. C. - - -	777	33 33	16	Grant - - -	-	40
		Crevier G. St. Jas. Prop. - - -	778	15 30	23	Thomas - - -	-	40
1871.					Oct. 1	Bank Divd. - - -	-	4,800
Jan. 12		A. M. Allow. to 12   - - -	779	200	15	Brown - - -	-	20
		Mrs. M. to 1 Feb. - - -	780	200	21	Devaney - - -	-	939 75
		C. Garth a/c. - - -	781	7 90	Nov. 7	Walton - - -	-	187 58
		Prov. Ins. Co. for Jany. - - -	782	22 50	14	Devany - - -	-	400
17		" " Apl. and July - - -	783	45		Chaput - - -	4,000	
19		" " J. W. Molson - - -	784	652 46		Chaput Int. - - -	420	
		and Int. - - -				Devany - - -	939 75	
		\$600 Coupon Bonds C. 101½. - - -	785	622 55		Starnes Langelier - - -	133 56	
Feb. 4		Accrued Int. and Brokerage - - -	786	85	Dec. 8	Lyman - - -	300	
		G. Brown a/c. - - -	786	85		Patton & Co. - - -	345	
		Crevier Gt. St. Jas. Prop. - - -	787	5 85		Scutthorp - - -	106 25	
6		A Booked Sale of Prop. - - -	788	165 48		Grant - - -	26 67	
May 2		Exps. Tutelle - - -	789	19 75		Bayley - - -	25	
6		" Appointg. Tutor - - -						6,296 23
		Minors Estate G. E. M. - - -	790	11 35		Patton & Co. - - -	50	
15		Tutelle Capt. Molson - - -	791	21 80		Int. M. Mill - - -	245	
22		Spriggins care of V. and M. - - -	792	50		Reekie - - -	264	
		Exps. J. D. M. to town - - -	793	8		Walton - - -	254 59	

RECORD.

No. 8.  
Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

1871.		Amount.		1870.		Amount.	
Expenditure.		No.	Amount.	Receipts.		Amount.	
May 22	Telegrams and postage	794	5 87	Dec. 8	Out. Bk. Div.	28	86
	Notarial Fees - - -	795	50		M. Avenue	-	480
	Hon. J. J. C. Abbott prof. services	796	500		Scutthorp - - -	-	425
					Rogers - - -	-	36
					Int. Chaput - - -	-	280
					Instl. M. Mill - - -	-	500
					Thomas - - -	-	66
					Ins. Corp. Bds. - - -	-	144
							2,773 39
				40	G. Rogers - - -	-	36
				19	M. Avenue Int. - - -	-	150
				27	L. Chaput - - -	-	4,280
					Lyman - - -	-	415
				1871.			
				Jan. 7	St. Michel Rd. Trust	-	65 74
				11	G. Rogers and Int.	-	289 65
				14	Mrs. Walton	-	67 09
				23	W. T. Thomas	-	26
					Inst. Coupon Bds.	-	252
					Div. Quebec Ins. Co.	-	57
					Scutthorp &c. to 10 Jany.	-	82 64
				Feb. 1	Lyman to 10 Jany.	-	233 33
					R. and Reekie "	-	31 11
					J. Grant "	-	83 11
					J. Thomson "	-	1,548 34
					C. and St. L. Rd. Stk. 4 Sh.	-	
					C. 1/5 - - -	-	80
					6 Ch. Ont. Bk. Sk. C. 10%	-	264
				8	Mrs. Walton to 10 Jany.	-	145 84
				9	Devaney & Co.	-	311 10
				10	T. G. Farmer - - -	-	500
				14	Thomas - - -	-	15 55
				24	Farmer - - -	-	1,000
					3 Rivers Hotel - - -	-	6,000
				Mar. 1	Int. M. Mill - - -	-	60
				8	" - - -	-	10
				14	J. G. Farmer - - -	-	29 97
				15	J. Patton & Co. advanced by A. M. - - -	-	200
				17	G. Rogers Constitut. - - -	-	36
					Ck. J. Brown 534 not used.	-	
					Cancelled - - -	-	149
					J. Molson Garden - - -	-	5,000
			862,924 39				902,565 43

(In Pencil)  
Possibly some further small charges will require insertion.

Statement referred to in annexed Acte de Dépôt thereof made by Samuel E. Molson and others executed before William Anderson Phillips the undersigned notary on the twenty-seventh day of March eighteen hundred and seventy-one.

(Signed) JNO. MOLSON.  
" WILLIAM H. KERR, Tutor.  
" S. E. MOLSON  
" W. A. PHILLIPS, N. P.

A true copy. (Signed) W. A. Phillips, N. P.  
(Endorsed.)

No. 3123, 27 March 1871 Acte de Dépôt by Samuel E. Molson Esq. *et al.*  
of Statement *in re* Estate Hon. John Molson.

Copy 1st W. A. Phillips N. P.

Plaintiffs' Exh. No. 3 filed with return, 8 March.

Paraphed G. H. K. Dep. P. S. C.

Plaintiffs' Exhibit No. 9 filed 16 March 1879. Account rendered in  
detail to Defendant and others of the management of the estate of the late  
John Molson referred to in deed of agreement 15 June 1871. Filed 16 March  
1879.

(Paraphed) H. P. and H., P. S. C.

RECORD.

No. 8.

Final  
Statement of  
Account of  
William and  
Alexander  
Molson, &c.  
—continued.

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Schedule No. 9.

On this twenty-eighth day of the month of September one thousand eight  
hundred and seventy-eight,

At the request of Alexander Molson of the city and district of Montreal  
Esquire as well personally as on his capacity of curator duly appointed to  
the substitution created as herein-after mentioned by the will of the late  
Honourable John Molson and also at the request of Dame Eliza Ann Holmes  
20 wife duly separated as to property of the said Alexander Molson and here-  
unto by him duly authorized as well in her own name as in the name and  
on behalf of her children issue of her marriage with the said Alexander  
Molson.

I William de M. Marler the undersigned notary public in and for the  
Province of Quebec in the Dominion of Canada residing and practising in the  
city and district of Montreal personally went to the Molsons Bank in the said  
city of Montréal being the principal place of business of the Banking  
Corporation known as the Molsons Bank.

Where being and speaking to Francis Wolferstan Thomas as of the said  
30 city of Montreal the cashier of the said Bank.

I declared that under the last will and testament of the said late  
Honourable John Molson dated the twentieth of April eighteen hundred and  
sixty the said late Honourable John Molson bequeathed the residue of his  
estate to his five sons in equal shares for their respective lives and after their  
death bequeathed the share of each son to his children subject to the usufruct  
thereof after the death of each son to the widow of such son and further  
provided that the share of each son should be an alimentary allowance for  
the support of each son and his family and should be exempt from seizure or  
attachment and could not be assigned or otherwise aliened for any purpose

p. 3716.

H

No. 9.

Copy of  
Protest of  
Alexander  
Molson,  
Curator, on  
the Molsons  
Bank, dated  
28th Sept.  
1878  
(Plaintiffs'  
Exhibit  
No. 4).

**RECORD.** or cause that thus the share of each son was substituted in favour of the widow and children of such son.

No. 9.  
Copy of  
Protest of  
Alexander  
Molson,  
Curator, on  
the Molsons  
Bank, dated  
28th Sept.  
1878  
(Plaintiffs'  
Exhibit  
No. 4)—con-  
tinued.

That as part of the share on the said residue coming to the said Alexander Molson were six hundred and forty shares of the capital stock of the said Molsons Bank which were transferred by the executors of the will of the said late Honourable John Molson to the said Alexander Molson personally.

Whereas by law and the terms of the said will they should have been transferred to the substitution created by said will in favour of Alexander Molson's family.

That of the said six hundred and forty shares, one hundred and sixty shares were on the nineteenth of June eighteen hundred and seventy-three transferred by the said Alexander Molson to John Molson in trust the said John Molson being then vice-president of the said Molsons Bank which transfer was made for the benefit of the said Bank as collateral security for a note of eight thousand dollars made by the said Alexander Molson and endorsed by the said John Molson and discounted by the said Molsons Bank on the said nineteenth of June one thousand eight hundred and seventy-three which note was discounted for the common benefit of the said John Molson the said F. W. Thomas and the said Alexander Molson each for one-third. That the transfer to John Molson in trust was made in accordance with an understanding that it should be for the benefit of the Bank and was made unlawfully. That the said Bank have since unlawfully allowed the said stock to be transferred from John Molson in trust to John Molson individually.

That the said transfer of the said one hundred and sixty shares is null for various reasons among others, 1. because the said Alexander Molson was unable in terms of the said will to alienate in any manner any part of his share of his said father's estate; 2. because made to the said Bank of its own stock; and 3. because the original transfer by the executors of the will of the said late Honourable John Molson to the said Alexander Molson personally is a nullity.

That the said one hundred and sixty shares of the said Molsons Bank stock are with all dividends accrued thereon the property of the substitution created in terms of the said last will of the said late Honourable John Molson in favour of the said Alexander Molson.

Wherefore I the said Notary at the request aforesaid and speaking as aforesaid do notify the said Molsons Bank of the above and do protest them against paying the dividends in respect of the said one hundred and sixty shares so transferred on the nineteenth June 1873 by said Alexander Molson to John Molson in trust or to any other person than the said Alexander Molson himself on pain of being held to pay the same again with interest and costs the said parties protesting reserving their recourse for past dividends paid on said one hundred and sixty shares to the said John Molson since the first day of October (1875) eighteen hundred and seventy-five inclusively and also their recourse for annulling the said transfer or transfers.



I the said Notary, at the request aforesaid, and speaking as aforesaid, have protested, and by these presents do most solemnly protest against the said Molsons Bank and all others whom the same doth, shall or may in any way concern for all costs, losses, damages, detriment, injury, and hurts already suffered and which may be hereafter in any way suffered and for all and whatsoever else may or ought to be protested for or against for and in consequence of all and every the causes and reasons above mentioned or incidental thereto.

10 And I have served a copy hereof upon the said Molsons Bank speaking as aforesaid.

Thus done and passed at the city of Montreal at the place and on the day month and year first written these presents bearing the number four thousand one hundred and fifteen of the original deeds of record in the office of the said Notary and I have signed in testimony of the premises.

(Signed) W. DE M. MARLER, N. P.

A true copy of the original hereof remaining of record at my office.

(Signed) W. DE M. MARLER, N. P.

20 (On the back.) No. 4,115, 28 September 1878. Notification and Protest at the request of Alexander Molson *ès-qual. et al.* to The Molsons Bank (2nd copy). Endorsed Plaintiffs' Exhibit No. 4 filed 8 March 1890. Paraphed A. B. L.

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Schedule No. 10.

District of Montreal.

Be it remembered that on the nineteenth day of October one thousand eight hundred and eighty-nine

Came and appeared before me the Honourable J. S. C. Wurtele one of the Judges of the Superior Court for Lower Canada in the district of Montreal, Herbert S.S. Molson of the city of Montreal, clerk, by A. Falconer Esquire, advocate, his attorney.

30 Who by virtue of my order given in this case on the fifteenth October instant for the purpose of appointing a new curator to the substitution created by the will of the late Honourable John Molson in favour of the children of Alexander Molson one of the sons of the said late John Molson to replace James Muir, the curator to the said substitution who desires to withdraw from the said curatorship hath caused to be cited before me the family council of the substitutes of said substitution, viz., John William Molson assurance agent first cousin of the substitutes, Harry Markland Molson accountant of the Molsons Bank second cousin of the substitutes, William A. Molson M.D. cousin, William T. H. Spragge gentleman second cousin of the substitutes, Salter E. A. Spragge gentleman, second cousin of the substitutes, George W.

H 2

RECORD.

No. 9.  
Copy of  
Protest of  
Alexander  
Molson,  
Curator, on  
the Molsons  
Bank, dated  
28th Sept.  
1878  
(Plaintiffs'  
Exhibit  
No. 4)—  
*continued.*

No. 10.  
Copy of A.  
B. Stewart's  
appointment  
as Curator,  
dated 19th  
Oct. 1889  
(Plaintiffs'  
Exhibit  
No. 5).

RECORD.

No. 10.  
Copy of A.  
B. Stewart's  
appointment  
as Curator,  
dated 19th  
Oct. 1889  
(Plaintiffs'  
Exhibit  
No. 5)—  
*continued.*

Simpson, broker and William Oliver Smith gentleman all of Montreal and the two last-named friends in default of other relations.

Who, having heard the said petition read and being duly sworn to give their advice on the premises unanimously say that they are of opinion that the said James Muir be relieved from his said charge, this resignation accepted and the said John William Molson, Harry Markland Molson, William A. Molson William T. H. Spragge and Salter E. A. Spragge are of opinion that W. Alexander Caldwell, accountant of Montreal, be appointed new curator to the said substitution and the said George William Simpson and William Oliver Smith are of opinion that Andrew B. Stewart of Montreal accountant be appointed such 10  
curator and they have signed

Signed	JNO. WM. MOLSON.
„	H. MARKLAND MOLSON.
„	W. A. MOLSON.
„	W. T. HENRY SPRAGGE.
„	G. W. SIMPSON.
„	WM. OLIVER SMITH.
„	S. E. A. SPRAGGE.

Having seen the above advice of family council and having heard the parties interested in this case by their respective attorneys, I the said Judge 20  
do hereby ratify and confirm the advice given unanimously that the resignation of the said James Muir be accepted and do ratify and homologate the same and do declare that he is relieved from the said charge of office and I do further ratify and confirm the advice, given by the said George William Simpson and William Oliver Smith and consequently I do order that the said Andrew B. Stewart be and remain curator to the said substitution created in favour of the children of the said Alexander Molson for all purposes of law.

Which curator being now personally present hath voluntarily accepted of the said charge promising upon oath faithfully to discharge the trust reposed in him and he hath signed. 30

Whereof *acte* at Montreal this twenty-third day of October eighteen hundred and eighty-nine.

(Signed)	A. B. STEWART.
„	I. WURTELE, J. S. C.

Certified to be a true copy of the original remaining deposited in the office of the said Court.

(Signed) A. B. LONGPRÈ, P.

(On the back.) The 19th October 1889. Substitution Honourable John Molson, New Curatorship (2nd copy).

(Endorsed.) Plaintiffs' Exhibit No. Five, filed 8 March 1890.  
(Paraphed.) A. B. L. 40

## Schedule No. 11.

Dominion of Canada, Province of Quebec, District of Montreal.

In the Superior Court for the Province of Quebec.

On the twentieth day of December one thousand eight hundred and eighty-nine came and appeared before us the Honourable L. A. Jetté one of the judges of the Superior Court for Lower Canada in the district of Montreal, Andrew B. Stewart of the city of Montreal accountant in his quality of curator to the substitution created under the last will of the late Honourable John Molson in so far as regards the share of Alexander Molson, one of the institutes  
 10 (by A. Falconer Esquire, advocate, his attorney)

Who by virtue of the fiat upon the petition presented to us this day for the purpose of the family council, of the said late Honourable John Molson upon the contents of the said petition and upon said advice it be ordered as to right and justice shall appertain hath caused to be cited before us a competent number of the friends and relatives of the said late John Molson viz. George W. Simpson, broker, Robert A. Lindsay gentleman, George Varey accountant, William A. Bates advocate, James G. Crowley, stenographer, Herbert S. S. Molson, merchant clerk, Henry Benjamin, merchant, William W. Robertson, advocate, all of the city of Montreal and all friends in default of relatives duly  
 20 notified and who did not appear

Who having heard the said petition read, and being duly sworn to give their advice on the premises, unanimously say that they are of opinion that the said petitioner in his said capacity of curator to the said substitution be authorised as prayed for by his said petition and the conclusions thereof

And they have signed

(Signed)	G. W. SIMPSON.
„	R. A. LINDSAY.
„	G. VAREY.
„	W. A. BATES.
„	HERBERT S. S. MOLSON.
„	W. W. ROBERTSON.
„	HENRY BENJAMIN.
„	J. J. CROWLEY.

30

Whereupon we have ratified and confirmed and we hereby ratify and confirm the said advice and we order that the said Andrew B. Stewart in his said quality of curator to the said substitution, be and remain authorised to institute an action against the Molsons Bank a body politic and corporate having its principal office and place of business in the city of Montreal and against Alexander Molson banker of the same place for the recovery of six  
 40 hundred and forty shares or their value of the capital stock of the said Bank, together with all dividends and interest on said shares illegally transferred to the said Alexander Molson individually by William Molson and Alexander Molson two of the executors of the said late Honourable John Molson and also to institute another action against Francis Wolferstan Thomas banker the said Alexander Molson and John Molson banker for the recovery of one

RECORD.

No. 11.  
 Copy of A.  
 B. Stewart's  
 authoriza-  
 tion to  
 institute  
 Action, dated  
 21st Dec.  
 1889  
 (Plaintiffs'  
 Exhibit  
 No. 6).

RECORD. hundred and sixty shares of the said Molsons Bank or their value together with all dividends and interest thereon which said shares were transferred to the said John Molson in trust by the said Alexander Molson as collateral security for the payment of a certain promissory note by the said Alexander Molson to the order of the said John Molson all which said shares were the property of the said substitution.

No. 11.  
Copy of A.  
B. Stewart's  
authoriza-  
tion to  
institute  
Action,  
dated 21st  
Dec. 1889  
(Plaintiffs'  
Exhibit  
No. 6)—  
*continued.*

Whereof act at Montreal this twenty-first day of December one thousand eight hundred and eighty-nine.

(Signed) L. A. JETTÉ, J.

Certified to be a true copy of the original remaining of record in the office 10  
of the undersigned Prothonotary of the said Superior Court in and for the said  
district of Montreal.

(Signed) A. B. LONGPRÉ, Prothonotary.

(On the back.)

The 21 December 1889.

Substitution Honourable John Molson. Authorization to institute an  
Action (2 copy).

(Endorsed.) Plaintiffs' Exhibit No. 6.

Filed 8 March 1890.

(Paraphed.) A. B. L.

20

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Schedule No. 12.

The Molsons Bank to Substitution Molson, A. B. Stewart, Curator.

Dr.

To 640 shares Molsons Bank Stock actual value	\$60,000	00
To dividends and bonus thereon from 1 Oct. 1871 to 1 Oct. 1889	-	44,800 00
To interest on dividends and bonus from ditto to ditto.	-	25,200 00
	<u>\$70,000</u>	<u>00</u>

Montreal, 31 January 1890.

(Endorsed.) Plaintiffs' Exhibit No. 7.

Filed 8 March 1890.

(Paraphed.) A. B. L.

---

30

No. 12.  
Statement.  
The Molsons  
Bank to  
substitution  
Molson, A.  
B. Stewart,  
Curator, Dr.,  
dated 31st  
Jan. 1890  
(Plaintiffs'  
Exhibit  
No. 7).

## Schedule No. 14.

Canada. Province of Quebec. District of Montreal.

No. 373.

Superior Court.

Andrew B. Stewart, *et al.*, *ès-qual.* - - - Plaintiffs,*versus*

The Molsons Bank - - - Defendants.

And the said Plaintiff for answer to the dilatory exception by the said Defendants pleaded say :

10 That Plaintiffs have now filed their exhibits and given notice thereof to the said Defendants.

That Defendant\* hath no right by law to file a dilatory exception on the grounds of non-production of exhibits by Plaintiffs, inasmuch as by law he could not be held to plead and his said dilatory exception was useless and unnecessary and should be dismissed with costs.

\* *Sic.*

Wherefore Plaintiffs pray the dismissal of said exception with costs distracts to the undersigned.

Montreal 11th March 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiffs.

20

And the said Plaintiffs for answer to the exception to the form by the said Defendants pleaded say :

That all and every the allegations in said declaration contained save in so far as they agree with Plaintiffs declaration, are false and unfounded in fact and law.

Wherefore they pray the dismissal of the said exception with costs distracts to the undersigned.

Montreal 11th March 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiffs.

30

(On the back.) I the undersigned one of the sworn Bailiffs of Her Majesty's Superior Court, appointed and acting in and for the district of Montreal residing in the city of Montreal hereby certify and return under my oath of office that I did on the thirtieth day of March eighteen hundred and ninety between the hours of ten and eleven of the clock in the forenoon, serve the within original Plaintiffs' answer to Defendants dilatory exception and exception to the form on the within-named Messrs. Abbotts Campbell and Meredith by speaking to and leaving a true and certified copy thereof with a reasonable person in charge of their office at their office aforesaid in the said city of

RECORD.

No. 13.  
Plaintiffs'  
Answer to  
the Dilatory  
Exception,  
filed 14th  
March 1890.

RECORD. Montreal. The distance from the Court House in the city of Montreal to said place of service is less than one mile and from my residence to place of service is less than one mile.

No. 13.  
Plaintiffs' Answer to the Dilatory Exception, filed 14th March 1890  
—continued.

Montreal. 13th March 1890.

(Signed) D. A. St. Amour, B. S. C.

(Endorsed.) Plaintiffs' answer to Defendants' dilatory exception and exception to the form.

Filed 14th March 1890.

(Paraphed.) A. B. L.

No. 14.  
Admission, filed 11th April 1890.

Schedule No. 17.

10

Canada. Province of Quebec. District of Montreal.

Superior Court.

A. B. Stewart, <i>et al.</i>	-	-	-	-	Plaintiffs,
					<i>versus</i>
The Molsons Bank	-	-	-	-	Defendants.

Declaration and Admission of Parties.

The Plaintiffs admit that only one of the substitutes comprised in the alleged substitution is a party to the present action, and that there are other substitutes living who are of the full age of majority and who are not parties to the present action.

20

Montreal April 8th, 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attys. for Plffs.

(Endorsed.) Admissions.  
Filed 11th April 1890.

(Paraphed.) H. & G., D. P.

No. 15.  
Defendants' Peremptory Exceptions and Pleas, filed 24th June 1890.

Schedule No. 19.

Superior Court.

Andrew B. Stewart, <i>ès-qual., et al.</i>	-	-	-	Plaintiffs,
				<i>v.</i>
The Molsons Bank	-	-	-	Defendants.

30

And the said Defendants, the Molsons Bank, for peremptory exception to the Plaintiffs' action and demand, say :

That by action instituted in this Honourable Court, and now pending therein, in a certain cause bearing the number nine hundred and forty-nine of

RECORD.

No. 15.  
 Defendants'  
 Peremptory  
 Exception  
 and Pleas,  
 filed 24th  
 June 1890—  
*continued.*

the records of this Court, wherein the said Plaintiffs were Plaintiffs, and the said Defendants were with other parties Defendants, the Plaintiffs concluded that the Defendants should be jointly and severally adjudged and condemned to restore to the substitution alleged to have been created by the will of the late Honourable John Molson and to place in the name of the said Alexander Molson, as institute of the said substitution under the will of the said late Honourable John Molson, in the books of the Defendants' Bank, one hundred and sixty shares of the capital stock of the said Bank, and to pay to the said Alexander Molson, for and on behalf of the said alleged substitution, and to the said  
 10 Plaintiff Stewart, in his alleged quality of curator, the sum of fourteen thousand dollars alleged to be the amount of dividends upon share, since the thirteenth day of December eighteen hundred and seventy-five, with interest thereon, and in default of their restoring the said one hundred and sixty shares, the said Plaintiffs concluded that they should be jointly and severally adjudged and condemned to pay therefor the sum of fifteen thousand dollars currency, with interest from the date of service of process, the whole to be invested in the name of the said Stewart, in his quality for the said alleged substitution.

That in and by the declaration in the said cause made and filed, the said  
 20 Plaintiffs, in effect, allege that the said one hundred and sixty shares, were a part of the six hundred and forty shares in question in this cause.

That the said cause is now pending before this Honourable Court, and undecided.

Wherefore the said Defendants pray that no judgment be rendered in this cause affecting any greater number of shares than four hundred and eighty and that no judgment affecting at least one hundred and sixty shares of the said total number of six hundred and forty, alleged by the present action, to be affected by the said alleged substitution, be rendered, until the final decision of the said cause, and the said Defendants declaring their option that this cause be tried at enquête and merits, further pray the dismissal of the Plaintiffs' action,  
 30 with costs, including costs of exhibits, distracts to the undersigned attorneys.

Montreal June 5th 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
 Attorneys for Defendants.

And the said Defendants without waiver of the foregoing plea, for further plea to the Plaintiffs' action and demand, say :

That all and every the allegations, matters and things in the Plaintiffs' declaration, set forth and contained, except in so far as they are hereinafter expressly admitted to be true, are false and the Defendants deny expressly each and every of them, from the words to the words  
 40 on the page thereof inclusive.

Wherefore the Defendants, declaring their option that this cause be tried at p. 3716. I

**RECORD.** enquête and merits, further prayeth dismissal of the Plaintiffs' action, with costs including costs of exhibits, distracts to the undersigned attorneys.

No. 15.  
Defendants'  
Peremptory  
Exception  
and Pleas,  
filed 24th  
June 1890  
—continued.

Montreal, June 5th 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH.  
Attorneys for Defendants.

And the said Defendants, the Molsons Bank, without waiver of the foregoing plea, for further plea to the Plaintiffs' action and demand, say :

1. That except in so far as they may be hereinafter admitted to be true, all the allegations of the Plaintiffs' declaration are false.

2. That the alleged institute under the said alleged substitution is still living, and was a consenting party to the disposal and transfer of all and every the shares of the capital stock of the Bank, which at the time of his death stood in the name of the late Honourable John Molson, or which at any time stood in the name of the executors of the said late Honourable John Molson. 19

3. That the said Plaintiffs Stewart and H. S. S. Molson have not at this present time any vested right to or interest in the said shares, nor are they entitled to have the said shares invested in their names, or to have or receive the said shares or any part of the dividends thereof, or any sum or sums in lieu thereof, even if the same formed part of the estate and succession of the said late Honourable John Molson; which the Defendants deny. 20

4. That there are others of the alleged substitutes under the said alleged substitution living, some of age, and some minors, who are not parties to the present proceedings either personally or by their tutors.

5. That the said Plaintiff Stewart and the said Plaintiff Herbert S. S. Molson have no legal right to have or maintain the present action nor have they or either of them ever been legally authorised to prosecute the same.

Wherefore the Defendants, declaring their option that this cause be tried at enquête and merits, further pray the dismissal of the Plaintiffs' action with costs, including costs of Exhibits, distracts to the undersigned attorneys.

Montreal June 5th 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants. 30

And the said Defendants, the Molsons Bank, without waiver of the foregoing plea, for further plea to the Plaintiffs' action and demand, say :

1. That except in so far as the same may be hereinafter expressly admitted to be true, all the allegations of the Plaintiffs' declaration are false.

2. That the said Alexander Molson was a trustee and executor of and under the last will and testament of the said late Honourable John Molson, and was a party both personally and as said trustee and executor to all that was done for the carrying out of the provisions of the said will, and to the 40



disposal of all the shares of stock in the said Bank, in which the said estate or he the said Alexander Molson were interested and is by law in consequence estopped and precluded from having or maintaining the conclusions of the said action, having by his own acts so far as regards the Defendants now pleading disposed of all interest in the said stock, and dispossessed himself thereof, and divested himself of all rights of property therein.

3. That it does not appear by the said declaration what part of the said stock or shares of interest or dividends thereon if any, or of the sum or sums claimed in lieu thereof, the said Alexander Molson, or the said Stewart, or the  
10 the said Herbert S. S. Molson claim to be entitled to, and they are not by law entitled to claim the said sum jointly.

4. That no stock or shares in the Defendants' Bank, in the Plaintiffs' declaration referred to, were by law or ever became subject to any substitution under the will of the said late Honourable John Molson, nor was any substitution created by the said will, in favour of the children of the said Alexander Molson, which affected any stock or shares in the said Bank.

5. That no property of the estate of the said late Honourable John Molson, or proceeds of property of the said estate, subject to any substitution in favour of the children of the said Alexander Molson under the said will, was ever  
20 invested in the stock of the said Bank, nor were the formalities required by law, for the investing of property of substitutions, ever done or performed so as to subject any stock or shares in the said Bank to any such substitution.

6. That by the last will and testament of the late Honourable John Molson, his brother, William Molson, of the city of Montreal, Esquire, Mary Ann Elizabeth Molson, the wife of the said Honourable John Molson, and Alexander Molson, one of the Plaintiffs in this cause, and the survivor or survivors of them, were appointed executors thereof, and their power was extended beyond the year and a day required by law.

7. That the said Dame Mary Ann Elizabeth Molson did not act as one of  
30 the trustees or executors, and on the fifth day of May 1862 departed this life.

8. That the only shares entered in the book of the said Bank, in the names of William Molson and Alexander Molson, executors of the estate of the late Honourable John Molson, were three thousand two hundred.

9. That as the fact was, and as appears by the will of the late Honourable John Molson, invoked by the Defendants the said executors had full power and authority to sell, assign, transfer or dispose of the said stock as they should see best in their discretion.

10. That on the fifth day of April in the year of our Lord, one thousand  
40 eight hundred and seventy-one, at the office of the said Bank at Montreal, the said William Molson and Alexander Molson, as executors of the estate of the said late Honourable John Molson, required the said Bank to accept and receive a transfer from them to the said Alexander Molson of six hundred and forty shares of the capital stock of the said Bank, subject to the rules and regulations of the said Bank, and thereupon to wit upon the said last-mentioned day by writing *sous seing privé* under their hands, and entered in the transfer book of the said Bank, the said executors did thereby then and there assign

RECORD.

No. 15.  
Defendants'  
Peremptory  
Exception  
and Pleas,  
filed 24th  
June 1890

—continued.

**RECORD.**  
 —  
 No. 15.  
 Defendants'  
 Peremptory  
 Exception  
 and Pleas,  
 filed 24th  
 June 1890  
 —continued.

and transfer unto the said Alexander Molson, the said six hundred and forty shares in the capital stock of the said Bank, absolutely and unconditionally, and the said Alexander Molson then and there accepted the said assignment of the said shares and the said transfer.

That the said Alexander Molson, by the said will, and by virtue of the premises, was the true and legal holder and owner and possessor of the said six hundred and forty shares, and was not at any time that apparent holder or owner of any other share or shares of the capital stock of the said Molsons Bank, purporting to be or which in fact were part of the estate and succession of the said late Honourable John Molson, and Defendants expressly deny that the one hundred and sixty shares in question ever formed part of the said six hundred and forty shares. 10

That by reason of the premises the said Alexander Molson became and was the absolute owner of the said six hundred and forty shares of the capital stock of the said Bank, and did at divers times assign and transfer the same upon the books of the Bank, in the manner required by law, to divers parties for value received as appears by the transfers thereof upon the books of the said Bank, and the said Bank were not bound by law to see to the disposal of the proceeds of any such stock, if the same was ever subject to any trust, express, implied, or constructive, which the Defendants do not admit, but expressly deny. 20

That by reason of the premises, and by law, the Defendants are not indebted to the Plaintiffs in manner and form as by the Plaintiffs' declaration alleged.

Wherefore the Defendants, declaring their option, that this cause be tried at enquête and merits, further pray the dismissal of the Plaintiffs' action, with costs including costs of exhibits, distracts to the undersigned attorneys.

Montreal, 5th June 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
 Attorneys for Defendants. 30

(Received copy.)

(Signed) ROBERTSON, FLEET, AND FALCONER,  
 Attorneys for Plaintiffs.

(Endorsed.) Defendants' Peremptory Exception and Pleas.  
 Filed 24th June 1890.

(Paraphed.) A. B. L.

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Schedule No. 20.  
Province of Quebec, District of Montreal.  
Superior Court.

RECORD.

No. 16.  
Answers to  
Pleas, filed  
7th Oct.  
1890.

A. B. Stewart *et al.* - - - - - Plaintiffs,  
*versus*  
The Molsons Bank - - - - - Defendants.

And the said Plaintiffs for answer to the plea of the said Defendants firstly pleaded, say :

10 That all and every the allegations of the Defendants in said plea contained, save in so far as they agree with Plaintiffs' Declaration, are false and unfounded.

That true it is that by an action bearing number 949 of the records of this Court, Plaintiffs have sued Defendants to have restored to the substitution (Plaintiffs in this cause) one hundred and sixty shares, which said 160 shares are a part of the shares in and by the present action prayed for.

That the said action No. 949 is based on entirely different causes from those on which the present action is based.

20 That nevertheless the Plaintiffs declare their willingness that the payment to Plaintiffs of the six hundred and forty shares of their value claimed by the present action be as a discharge of the said action No. 949.

Wherefore Plaintiffs pray dismissal of said plea, with costs distracts to the undersigned.

Montreal, 2nd October 1890.

(Signed)      ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiffs.

And the said Plaintiffs for answer to the plea by said Defendants secondly pleaded, say :

That all and every the allegations in Plaintiffs' Declaration contained are true and well founded.

30 Wherefore the Plaintiffs pray dismissal of said plea with costs and further as in and by their declaration they have already prayed.

Montreal, 2nd October 1890.

(Signed)      ROBERTSON, FLEET, AND FALCONER,  
Attys. for Plaintiffs.

And the said Plaintiffs for answer to the plea by the said Defendants thirdly pleaded, say :

That all and every the allegations in said plea contained are false and unfounded in fact and insufficient in law to maintain the conclusions thereof.

RECORD.

No. 16.  
Answers to  
Pleas, filed  
7th Oct.  
1890—con-  
tinued.

Wherefore Plaintiffs pray dismissal of said plea with costs distracts to the undersigned.

Montreal, 2nd October 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attys. for Plaintiffs.

And the said Plaintiffs for answer to the plea by said Defendants fourthly pleaded, say :

That all and every the allegations in said plea contained are false and unfounded.

That the shares in Plaintiffs' declaration referred to were always the property of the substitution created by the will of the late Honourable John Molson in favour of the wife and children of said Alexander Molson in Plaintiffs' Declaration also referred to.

That the trusts established by the will of the late Honourable John Molson were established, subject to the substitution by the said will created and the power of the executors and trustees appointed in said will, as regards the sale of the property, subject to the said trust, was limited to sale, for investment only, and to a term of ten years from the date of the death of the testator, and after the expiration of said ten years, the executors named by the said will had no authority, nor power to convey or alienate the property of said substitution.

That the shares claimed by Plaintiffs' declaration always were the property of said substitution, and that the said Alexander Molson never had nor could have any possession thereof, otherwise than as institute, under said will nor any power or authority to dispose of them by pledge or otherwise.

Wherefore Plaintiffs pray dismissal of said plea with costs, distracts to the undersigned.

Montreal, 2nd October 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiffs.

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(Received copy.)

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

(Endorsed.) Answer to Plea.  
Filed 7th October 1890.

(Paraphed.) G. H. K., Deputy P. S. C.

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## Schedule No. 21.

Province of Quebec, District of Montreal.

Superior Court.

A. B. Stewart *et al.* - - - - - Plaintiffs,  
*versus*  
 The Molsons Bank - - - - - Defendants.

RECORD.

No. 17.  
 Defendants'  
 Replication  
 to Answers to  
 Pleas, filed  
 17th Oct.  
 1890.

And Defendants for replication to the answer to first plea herein filed,  
 say :

10 That the allegations matters and things set forth and contained in said  
 answer to first plea are and each of them is false, untrue and unfounded in  
 fact.

That all allegations matters and things set forth and contained in said first  
 plea are and each of them is true and well founded in fact.

Wherefore the Defendants pray that said answer to first plea be hence  
 dismissed with costs and further pray as in and by the conclusions of their said  
 first plea they have already prayed.

Montreal, October 11th, 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
 Attys. for Defts.

20 And Defendants for replication to the answer to the second plea herein  
 filed, say :

That all the allegations matters and things set forth and contained in  
 said answer to second plea are and each of them is false, untrue and unfounded  
 in fact.

That all the allegations matters and things set forth and contained in  
 said second plea are and each of them is true and well founded in fact.

Wherefore the Defendants pray that said answer to second plea be hence  
 dismissed with costs, and further pray as in and by the conclusions of their  
 second plea they have already prayed.

30 Montreal, October 11th, 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
 Attorneys for Defendants.

And Defendants for replication to answer to third plea herein filed,  
 say :—

That all the allegations matters and things set forth and contained in  
 said answer to third plea are and each of them is false, untrue and unfounded  
 in fact.

That all the allegations matters and things set forth and contained in  
 said third plea are and each of them is true and well founded in fact.

RECORD.

No. 17.  
Defendants'  
Replication  
to Answers to  
Pleas, filed  
17th Oct.  
1890—con-  
tinued.

Wherefore the Defendants pray that said answer to third plea be hence dismissed with costs, and further pray as in and by the conclusions of their said third plea they have already prayed.

Montreal, October 11th, 1890.

(Signed)

ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

And Defendants for replication to the answer to fourth plea herein filed say :

That all the allegations matters and things set forth and contained in said answer to fourth plea are and each of them is false, untrue and unfounded 10  
in fact.

That all the allegations matters and things set forth and contained in said fourth plea are and each of them is true and well founded in fact.

Wherefore the Defendants pray that said answer to fourth plea be hence dismissed with costs and further pray as in and by the conclusions they have already prayed.

Montreal, October 11th, 1890.

(Signed)

ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

(Received copy.)

(Signed) ROBERTSON & Co.

20

(Endorsed.) Defendant's Replication to answer to plea, filed 17th October 1890.

(Paraphed.) G. H. K., D. P. S. C.

No. 18.  
Plaintiffs'  
Articulations  
of Facts,  
filed 5th  
Dec. 1890.

Schedule No. 23.

Canada, Province of Quebec, District of Montreal.

Superior Court.

Andrew B. Stewart *et al.*, *ès-qual.* - - - Plaintiffs,

*versus*

The Molsons Bank - - - Defendants. 30

Plaintiffs' Articulations of Facts.

1st Articulation. Is it not true that the Honourable John Molson, in his lifetime of the city and district of Montreal, died on or about the twelfth day of July eighteen hundred and sixty, having previously made and executed his last will and testament, bearing the date the twentieth day of April eighteen hundred and sixty?

2nd. Is it not true that the said will was duly probated in the Superior Court for the District of Montreal on or about the seventeenth day of April eighteen hundred and sixty, and was duly registered on the nineteenth day of November, eighteen hundred and sixty ?

3rd. Is it not true that Dame Mary Ann Elizabeth Molson, wife of the testator by virtue of the powers conferred on her by said will by acte before T. Doucet, Notary Public, on the thirteenth of May eighteen hundred and sixty-one appointed Joseph Dinham Molson one of the legatees to be after her decease trustee and executor of said will ?

10 4th. Is it not true that regular and certified copies of the said will and of the said appointment were duly deposited with the said Bank Defendants and with the late William Molson executor, who was then President of the said Molsons Bank ?

5th. Is it not true that the said Dame Mary Ann Elizabeth Molson died on or about the fifth day of May eighteen hundred and sixty-two ?

20 6th. Is it not true that on or about the twenty-fifth of March eighteen hundred and seventy-one, William Molson and Alexander Molson, two of said executors rendered their final statement of account to the heirs under said will and on or about said date the dépôt of said account was duly made in the office of W. A. Phillips, Notary Public, and that on said date, among other assets of the said estate were thirty-two hundred shares (3,200) of the capital stock of the said Bank Defendants, standing in the books of the said Bank in the name of the said executors and trustees, and that on or about the twenty-seventh day of March, eighteen hundred and seventy-one one-fifth thereof was handed over to the estate of the late George E. Molson one of the legatees of the said will as also one-fifth thereof was handed to Joseph Dinham Molson, one of the legatees under said will and the said shares then became vested in said legatees ?

30 7th. Is it not true that on or about the fifth day of April, eighteen hundred and seventy-one, William Molson and Alexander Molson two of the said executors transferred to the said Alexander Molson individually as a pretended sale, his one-fifth of the said thirty-two hundred shares (3,200) to wit, his six hundred and forty shares of the capital stock of the said Bank, without specifying that such transfer was made under property inalienable and insaisissable ?

40 8th. Is it not true that without such declaration and specification, the Bank was not justified in allowing and sanctioning any transfer of such shares, being then recorded in the books of the Bank, as the property of the said substitution, and subject to the conditions contained in the will of the said Honourable John Molson ?

9th. Is it not true that on or about the eleventh day of May, one thousand eight hundred and seventy-one, the said executors handed over to Samuel E. Molson, another of said heirs, his one-fifth of the said thirty-two hundred shares (3,200) and the said shares were duly registered as his under said will ?

10th. Is it not true that the said six hundred and forty shares, so afore-said transferred and placed in the name of the said Alexander Molson individually were and are the property of the said substitution, and a portion

RECORD.  
 No. 18.  
 Plaintiffs'  
 Articulations  
 of Facts,  
 filed 5th  
 Dec. 1890—  
*continued.*

of their share in the said estate of the late Honourable John Molson, under said will, as such were insaisissable and inalienable for any purpose or cause whatsoever, and that the said transfer by the said executors to the said Alexander Molson of the said six hundred and forty shares was wholly irregular and illegal ?

11th. Is it not true that by reason of the said transfer, and the said registration in the name of the said Alexander Molson, the said Alexander Molson was permitted illegally to deal with the said shares as though they belonged to himself ?

12th. Is it not true that moreover, at a date when the said Bank Defendants 10 were in possession of one hundred and sixty shares of the said capital stock and when they were able to prevent any further transfer thereof, to wit, on or about the twenty-eighth of September, eighteen hundred and seventy-eight, the said Bank Defendants were by the ministry of Marler N. P. acting on behalf of Alexander Molson, then curator to said substitution and his wife and children, duly notified that the said substitution was the owner of the said shares and of the illegality of the said transfer and protested thereof ?

13th. Is it not true that the said Alexander Molson is now and has been for many years individually insolvent and the said substitution have no means of recovering from him the said shares or their value ? 20

14th. Is it not true that the said shares are worth the sum of \$60,000, and the dividends accrued thereon with interest are worth the sum \$70,000 ?

15th. Is it not true that the said Plaintiff Andrew B. Stewart, was duly named and appointed curator to the substitution created by the said will, in favour of the children of the said Alexander Molson, by the Superior Court for the district of Montreal on the nineteenth day of October last, and was duly authorized by the Superior Court for the district of Montreal on the advice of a family council on the twenty-first day of December last, to institute the present action, and the said Plaintiff Herbert S. S. Molson, is a son of the said late Alexander Molson, one of the substitutes comprised in the said substitution, 30 and the said Alexander Molson is the said Institute ?

Montreal, November — 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
 Attorneys for Pltffs.

(Received copy.)

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
 Attorneys for Defendants.

(Endorsed.) Plaintiff's Articulations of Facts.

Filed 5th December 1890.

(Paraphed). G. H. K., Deputy P. S. C.



## Schedule No. 24.

Province of Quebec. District of Montreal.

Superior Court.

Andrew B. Stewart *et al.*, *ès-qual.* - - - Plaintiffs,*v.*

The Molsons Bank - - - Defendants.

Defendants' Answers to Plaintiffs' Articulation of Facts.

To the first—No.

To the second—No.

10

To the third—No.

To the fourth—No.

To the fifth—No.

To the sixth—No.

To the seventh—No.

To the eighth—No.

To the ninth—No.

To the tenth—No.

To the eleventh—No.

To the twelfth—No.

20

To the thirteenth—No.

To the fourteenth—No.

To the fifteenth—No. .

Montreal, November — 1890.

(Signed)

ABBOTTS, CAMPBELL, AND MEREDITH.  
Attorneys for Defts.

(Received copy.)

(Signed)

ROBERTSON & Co.,  
Attorneys for Plffs.

(Endorsed.) Defendants Answers to Articulations of Facts.

30

(Filed.) 4th March 1892.

(Paraphed.) G. H. K., Deputy P. S. C.

RECORD.

No. 19.  
Defendants'  
Answers to  
Plaintiffs'  
Articulations  
of Facts,  
filed 4th  
March 1892.

RECORD.

No. 20.  
 Defendants'  
 Articulations  
 of Facts,  
 filed 4th  
 March 1892.

## Schedule No. 24.

Canada. Province of Quebec. District of Montreal.

Superior Court.

Andrew B. Stewart *et al.*, *ès-qual.* - - - Plaintiffs,  
*v.*  
 The Molsons Bank - - - Defendants.

## Defendants' Articulations of Facts.

1. Is it not true that the said Plaintiffs did not produce with the return of their action, and have not produced in support thereof the will of the late Honourable John Molson ? 10
2. Is it not true that said Plaintiffs did not produce with the return of their action and have not produced in support thereof the judgment appointing Plaintiff Stewart in his alleged quality of curator ?
3. Is it not true that the said Plaintiffs did not produce with the return of their action, and have not produced in support thereof any of the other exhibits in support of their present action and demand ?
4. Is it not true that by law the Defendants cannot be called upon to answer the said action and demand until such time as the said exhibits have been produced ?
5. Is it not true that this Court cannot proceed in the present case nor 20 compel the Defendants to answer in any manner the Plaintiffs' action and demand ?
6. Is it not true that by the declaration the Plaintiffs seek to recover the capital and interest of certain shares of capital stock in the Molsons Bank alleged to have been heretofore registered in the name of the Plaintiff as owner ?
7. Is it not true that the said stock is further alleged to have been subject to a substitution in favour of the children of the said Molson ?
8. Is it not true that the said Andrew B. Stewart claims to be curator of the said substitution ? 30
9. Is it not true that only one of the substitutes comprised in the alleged substitution is a party to the present action ?
10. Is it not true that there are other substitutes living ?
11. Is it not true that most of said substitutes are of the full age of majority ?
12. Is it not true that the said substitutes have not been made parties to the present action either personally or by their representatives ?
13. Is it not true that by the prayer of the said action the Plaintiffs conclude jointly that the said stock be placed in the name of Alexander Molson as Institute and of the said alleged substitution ? 40

14. Is it not true that the Plaintiffs further conclude that certain arrears of dividends upon the said shares be paid to the said Alexander Molson and the said A. B. Stewart in his said quality?

15. Is it not true that the said Plaintiffs further conclude that in default of the restoration of the said shares the Defendants be jointly and severally condemned to pay and satisfy to the said Alexander Molson as Institute, and to the said A. B. Stewart, as Curator the value of the said shares and interest?

16. Is it not true that the said parties are wrongly joined in the said action?

10 17. Is it not true that the said parties have no common interest?

18. Is it not true that the said Alexander Molson, Andrew B. Stewart, and Herbert S. S. Molson are not by law entitled upon the allegations of the said declaration to have or maintain a common action?

19. Is it not true that the said action discloses an alleged wrongful disposition by the said Alexander Molson, of property alleged to belong to the said substitution?

20 20. Is it not true that the said substitution and the said Stewart in his quality have no right or title to the possession of the said stock or of any part of the interest or dividends thereon or to any sum in lieu thereof, during the lifetime of the said Molson, unless the said Molson be declared to be deprived of his rights as Institute?

21. Is it not true that no judgment has ever been pronounced declaring the said Alexander Molson to be deprived of his rights as Institute?

22. Is it not true that as Institute if the said stock is or ever was subject to a substitution in favour of his children the said Alexander Molson is entitled to the possession, use and enjoyment thereof, during his lifetime?

23. Is it not true that the interest of the said Molson is different from and adverse to the interest of the said Stewart in his said quality and of the said Herbert S. S. Molson?

30 24. Is it not true that if the said parties have any rights of action against the Defendants, the said rights of action can only be exercised by separate action?

25. Is it not true that the allegations and the conclusions of the said declaration are insufficient and vague?

40 26. Is it not true that the allegations and the conclusions of the said declaration do not disclose how much of the said interest or dividends or of the sum claimed in lieu thereof or in lieu of the capital of the said stock the said Alexander Molson claims as belonging to him and how much the said A. B. Stewart in his quality of the said Herbert S. S. Molson claims as belonging to him?

27. Is it not true that the said Defendants cannot plead to the said action, inasmuch as their grounds of defence to any claim by said Alexander Molson as Institute are different from the grounds of defence to any claim the said Stewart or the said Herbert S. S. Molson may have?

RECORD.

No. 20.  
Defendants'  
Articulations  
of Facts,  
filed 4th  
March 1892  
—continued.

RECORD.

No. 20.  
Defendants'  
Articulations  
of Facts,  
filed 4th  
March 1892  
—continued.

28. Is it not true that all the allegations, matters and things set forth and contained in the Plaintiffs' declaration, are and each of them is false, untrue and unfounded in fact?

29. Is it not true that all the allegations, matters and things set forth, and contained in the Defendants' plea, are, and each of them is true and well founded in fact?

Montreal, November 29th, 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defts.

(Received copy.)

(Signed) ROBERTSON & Co.

10

(Endorsed.) Defendants' Articulations of Facts.

(Filed) 4th March 1892.

(Paraphed) G. H. K., Deputy P. S. C.

No. 21.  
Plaintiffs'  
Answers to  
Defendants'  
Articulations  
of Facts,  
filed 4th  
Dec. 1890

Schedule No. 25.

Province of Quebec, District of Montreal, Superior Court.

Andrew B. Stewart *et al.*, *ès-qual.* - - - Plaintiffs,

*versus*

The Molsons Bank - - - Defendants.

Plaintiffs' Answers to Defendants' Articulations of Facts.

20

To the 1st	Articulation	Plaintiffs	answer—	No.
„	2nd	„	„	No.
„	3rd	„	„	No.
„	4th	„	„	No.
„	5th	„	„	No.
„	6th	„	„	No.
„	7th	„	„	No.
„	8th	„	„	No.
„	9th	„	„	No.
„	10th	„	„	No.
„	11th	„	„	No.
„	12th	„	„	No.
„	13th	„	„	No.
„	14th	„	„	No.
„	15th	„	„	No.
„	16th	„	„	No.
„	17th	„	„	No.

30

To the 18th Articulation Plaintiffs answer—No.

	19th	”	”	”	No.
	20th	”	”	”	No.
	21st	”	”	”	No.
	22nd	”	”	”	No.
	23rd	”	”	”	No.
	24th	”	”	”	No.
	25th	”	”	”	No.
	26th	”	”	”	No.
10	27th	”	”	”	No.
	28th	”	”	”	No.
	29th	”	”	”	No.

RECORD.  
 No. 21.  
 Plaintiffs’  
 Answers to  
 Defendants’  
 Articulations  
 of Facts,  
 filed 4th  
 Dec. 1890—  
*continued.*

Montreal, Dec. 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
 Attorneys for Plaintiffs.

(Received copy.)

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
 Attorneys for Defendants.

(Endorsed) Plaintiff’s Answers to Defendants’ Articulations.

20 (Filed) 4th Dec. 1890.

(Paraphed) G. H. K., Deputy P. S. C.

Schedule No. 26.

Province of Quebec, District of Montreal, Superior Court.

A. B. Stewart *et al.* - - - - Plaintiffs,

*versus*

The Molsons Bank - - - - Defendants,

and

G. W. Simpson - - - - Petitioner.

No. 22.  
 Petition of  
 G. W.  
 Simpson,  
 praying to be  
 allowed to  
 take up the  
 Instance in  
 his quality  
 of Curator to  
 said substi-  
 tution in the  
 place and  
 stead of the  
 late A. B.  
 Stewart, and  
 Notice, filed  
 12th Jan.  
 1891.

30 To the said Superior Court or to any of the Honourable Judges or Prothonotary thereof.

The Petition of G. W. Simpson of the City and District of Montreal, broker, respectfully represents:

That on or about the nineteenth day of December last past (1890) A. B. Stewart, one of the Plaintiffs in this cause in his quality of Curator to the substitution created by the last will and testament of the late Honourable John Molson, departed this life.

40 That on or about the twenty-second day of December last past, your Petitioner was by a judgment of this Court, on the advice of a family Council, duly appointed Curator to said substitution in the place and stead of said late A. B. Stewart and authorised to take up the instance in this cause, as appears by a copy of order herewith produced.

## RECORD.

No. 22.  
Petition of  
G. W.  
Simpson,  
praying to be  
allowed to  
take up the  
Instance in  
his quality  
of Curator to  
said substi-  
tution in the  
place and  
stead of the  
late A. B.  
Stewart, and  
Notice, filed  
12th Jan.  
1891—con-  
tinued.

Wherefore your Petitioner prays that he be allowed to take up the instance in this cause in his quality of curator to said substitution and continue the said cause to judgment in the place and stead of the said late A. B. Stewart the whole with costs distracts to the undersigned.

Montreal, 8th January 1891.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Petitioner.

Messrs. Abbotts, Campbell, and Meredith,  
Attys. for Defendants.

Thomas and Molsons Bank.

10

Gentlemen,

Take notice of the foregoing petition and that the same will be presented to this Honourable Court at the Court House, Montreal, on the twelfth day of January instant, at half-past ten of the clock, in the forenoon, or so soon as Counsel can be heard.

Montreal, 8th January 1891.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attys. for Petitioner.

(Received copy).

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH, 20  
Attys. for Defendants.  
Thomas and Molsons Bank.

(Endorsed.) Petition and Notice.

Filed 12th January 1891.

(Paraphed.) A. E. D., D. P. S. C.

Accordée.

(Paraphed.) M. M., J. C. S.

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Schedule No. 28.

District of Montreal.

No. 23.  
Copy of  
Order ap-  
pointing G.  
W. Simpson  
Curator, in  
place of A.  
B. Stewart,  
dated 19th  
Dec. 1890  
(Plaintiffs'  
Exhibit  
No. 1).

Be it remembered that on the nineteenth day of December one thousand 30  
eight hundred and ninety came and appeared before the Honourable J. Alphonse  
Ouimet one of the Judges of the Superior Court for Lower Canada in the  
district of Montreal, Alexander Molson of the city of Montreal one of the  
institutes and legatees under the will of the late Honourable John Molson in  
his lifetime of the same place of date the twentieth of November eighteen  
hundred and sixty (by A. Falconer esquire, advocate, his attorney).

Who by virtue of the fiat upon the petition presented to me this day for  
the purpose of appointing a new curator to the substitution created under the  
said will in the room and place of late A. B. Stewart the late curator to the  
said substitution hath caused to be cited before me a competent number of 40

the relatives and friends of the said institutes of said substitution viz., Joseph Dinham Molson of Lennoxville, Captain, brother of the said institute, Herbert S. S. Molson clerk, son, William Oliver Smith, gentleman, George W. Simpson, broker, John James Brown, architect, C. Simpson Garland, gentleman, William W. Robertson, J. C. all of the city of Montreal and the five last-named friends of the said Institute in default of relatives duly notified.

Who having heard the said petition read, and being duly sworn to give their advice on the premises, unanimously say that they are of opinion that the said George W. Simpson be appointed new curator to the said substitution to replace the said late A. B. Stewart and they have signed.

(Signed) J. D. MOLSON.  
 „ C. SIMPSON GARLAND.  
 „ HERBERT S. S. MOLSON.  
 „ WM. OLIVER SMITH.  
 „ G. W. SIMPSON.  
 „ JOHN JAMES BROWN.  
 „ W. W. ROBERTSON.

Whereupon the said advice is by me the said Judge ratified and confirmed, and it is ordered in consequence that the said George W. Simpson be and remain new curator to the said substitution of the said late Honourable John Molson for all legal purposes to replace the said late A. B. Stewart.

Which new curator being now personally present hath voluntarily accepted of the said charge promissory upon oath faithfully to discharge the trust reposed in him and he hath signed.

(Signed) G. W. SIMPSON.

Whereof *acte* at Montreal this twenty-second day of December one thousand eight hundred and ninety.

(Signed) J. ALPHONSE OUIMET,  
 J. C. S.

Certified to be a true copy of the original remaining of record in the office of the Prothonotary of the said Superior Court in and for the said district of Montreal.

(Signed) J. E. CHAMPOUX,  
 Dep. P. S. C.

(On the back.)

No. 703.

The 22nd December 1890, Substitution Honourable John Molson. New Curatorship (2nd copy).

(Endorsed.) Plaintiff Exhibit No. 1.\* 12th January 1891.  
 (Paraphed.) G. H. K., Dep. P. S. C.

RECORD.  
 No. 23.  
 Copy of  
 Order ap-  
 pointing G.  
 W. Simpson,  
 Curator, in  
 place of A.  
 B. Stewart,  
 dated 19th  
 Dec. 1890  
 (Plaintiffs'  
 Exhibit  
 No. 1)—*con-  
 tinued.*

## RECORD.

No. 24.  
Declaration  
as to the  
withdrawal  
of certain  
allegations  
contained in  
Plaintiffs'  
Declaration,  
filed 28th  
Jan. 1892.

## Schedule No. 34.

Canada. Province of Quebec. District of Montreal.

No. 373.

Superior Court.

A. B. Stewart, *ès-qual.*, *et al.* - - - - Plaintiff,  
*versus*  
The Molsons Bank - - - - Defendant ;  
and  
G. W. Simpson - - - - Plaintiff *par rep. d'instance.*

The Plaintiffs hereby declare that they withdraw the allegations contained 10  
in the fourth paragraph of the fifth page of their Declaration beginning with  
the words "that moreover at a date" and ending with the words "said transfers  
and protested therefore" to the end that none of the matters and things  
mentioned in said paragraph be in issue in the present cause and they pray that  
*actes* be granted them of their said declaration and make motion to that effect.

Montreal, 26 January 1892.

ROBERTSON, FLEET, AND FALCONER.

Recd. copy.

ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

20

(Endorsed) Produit 28 Janv. 1892. Motion accordée frais réservés son  
Honneur le Juge Taschereau.

(Paraphed) E. B. Dep. P. G. H. K. Dep. P. S. C.

## Schedule No. 36.

## Current Prices of Molsons Bank Stock.

No. 25.  
Statement  
showing  
Current  
Prices of  
Molsons  
Bank Stock,  
from April  
1871 to Jan.  
1892. Cer-  
tified by W.  
J. Fenwick,  
G. W. Simp-  
son, and  
John Lord  
(Plaintiffs'  
Exhibit  
No. 1 at  
Enquête).

April	5	1871	-	-	-	-	116
Oct.	1	"	-	-	-	-	110
April	1	1872	-	-	-	-	113
Oct.	1	"	-	-	-	-	107 $\frac{1}{2}$
April	1	1873	-	-	-	-	111
Oct.	1	"	-	-	-	-	104
April	1	1874	-	-	-	-	108
Oct.	1	"	-	-	-	-	111 $\frac{1}{2}$
April	1	1875	-	-	-	-	114
Oct.	1	"	-	-	-	-	104
April	1	1876	-	-	-	-	108
Oct.	1	"	-	-	-	-	109

30



	April 1	1877	-	-	-	-	107 $\frac{3}{4}$	RECORD. — No. 25. Statement showing Current Prices of Molsons Bank Stock from April 1871 to Jan. 1892. Cer- tified by W. J. Fenwick, G. W. Simp- son, and John Lord (Plaintiffs' Exhibit No. 1 at Enquête)— <i>continued.</i>
	Oct. 1	"	-	-	-	-	103	
	April 1	1878	-	-	-	-	90	
	Oct. 1	"	-	-	-	-	90	
	April 1	1879	-	-	-	-	75	
	Oct. 1	"	-	-	-	-	64	
	April 1	1880	-	-	-	-	80	
	Oct. 1	"	-	-	-	-	98 $\frac{1}{2}$	
40	April 1	1881	-	-	-	-	109	
	Oct. 1	"	-	-	-	-	115	
	April 1	1882	-	-	-	-	125 $\frac{1}{2}$	
	Oct. 1	"	-	-	-	-	131	
	April 1	1883	-	-	-	-	120 $\frac{1}{2}$	
	Oct. 1	"	-	-	-	-	115	
	April 1	1884	-	-	-	-	115	
	Oct. 1	"	-	-	-	-	106	
	April 1	1885	-	-	-	-	112	
	Oct. 1	"	-	-	-	-	117 $\frac{3}{4}$	
	April 1	1886	-	-	-	-	124	
20	Oct. 1	"	-	-	-	-	137	
	April 1	1887	-	-	-	-	140	
	Oct. 1	"	-	-	-	-	135	
	April 1	1888	-	-	-	-	140 $\frac{1}{4}$	
	Oct. 1	"	-	-	-	-	150	
	April 1	1889	-	-	-	-	158	
	Oct. 1	"	-	-	-	-	166	
	April 1	1890	-	-	-	-	155	
	Oct. 1	"	-	-	-	-	155	
	April 1	1891	-	-	-	-	152	
30	Oct. 1	"	-	-	-	-	155	
	Jany. 25	1892	-	-	-	-	164	

We certify that the market value of Molsons Bank stock on the dates above mentioned was as set forth above.

Montreal, 25th January 1892.

Signed W. J. FENWICK, Broker.  
 " G. W. SIMPSON, Stock Broker.  
 " JOHN LORD, Assistant M. Stock Exchange.

(Endorsed) Plaintiffs' Exhibit No. 1 filed at Enquête. Filed 17th February 1892.

40 (Paraphed) G. H. K. Dep. P.

## RECORD.

## Schedule No. 37.

## Dividends on Molsons Bank Stock.

No. 26.  
Statement  
showing  
Dividends on  
Molsons  
Bank Stock  
from Oct.  
1871 to Oct.  
1891. Cer-  
tified by W.  
J. Fenwick  
and G. W.  
Simpson,  
(Plaintiffs'  
Exhibit  
No. 2 at  
Enquete,  
filed 17th  
Feb. 1892).

Statement of the Dividends and Bourses on 640 Shares Molsons Bank Stock claimed by the substitution created under the will of the late Hon. John Molson in favour of the wife and children of Alexander Molson from 1st October 1871 to 1st October 1891 inclusive.

October 1. 1871	Dividend 4 per cent.	-	-	-	1,280	
April 1. 1872	" 4 "	-	-	-	1,280	
October 1. 1872	" 4 "	-	-	-	1,280	
April 1. 1873	" 4 "	-	-	-	1,280	10
October 1. 1873	" 4 "	-	-	-	1,280	
April 1. 1874	" 4 "	-	-	-	1,280	
October 1. 1874	" 4 "	-	-	-	1,280	
April 1. 1875	" 4 "	-	-	-	1,280	
October 1. 1875	" 4 "	-	-	-	1,280	
April 1. 1876	" 4 "	-	-	-	1,280	
October 1. 1876	" 4 "	-	-	-	1,280	
April 1. 1877	" 4 "	-	-	-	1,280	
October 1. 1877	" 4 "	-	-	-	1,280	
April 1. 1878	" 3 "	-	-	-	960	20
October 1. 1878	" 3 "	-	-	-	960	
April 1. 1879	" 3 "	-	-	-	960	
October 1. 1879	" 3 "	-	-	-	960	
April 1. 1880	" 3 "	-	-	-	960	
October 1. 1880	" 3 "	-	-	-	960	
April 1. 1881	" 3 "	-	-	-	960	
October 1. 1881	" 3 "	-	-	-	960	
April 1. 1882	" 3½ "	-	-	-	1,120	
October 1. 1882	" 3½ "	-	-	-	1,120	
April 1. 1883	" 4 "	-	-	-	1,280	30
October 1. 1883	" 4 "	-	-	-	1,280	
Carried forward				-	-	29,120

## Dividends on Molsons Bank Stock.

Brought forward				-	-	29,120	
April 1. 1884	Dividend 4 per cent.	-	-	-	1,280		
October 1. 1884	" 4 "	-	-	-	1,280		
April 1. 1885	" 4 "	-	-	-	1,280		
October 1. 1885	" 4 "	-	-	-	1,280		
April 1. 1886	" 4 "	-	-	-	1,280		
October 1. 1886	" 4 "	-	-	-	1,280	40	
April 1. 1887	" 4 "	-	-	-	1,280		

October 1. 1887	Dividend 4 per cent.	-	-	-	1,280	RECORD. — No. 26. Statement showing Dividends on Molsons Bank Stock from Oct. 1871 to Oct. 1891. Cer- tified by W. J. Fenwick and G. W. Simpson (Plaintiffs' Exhibit No. 2 at Enquête, filed 17th Feb. 1892)— <i>continued.</i>
April 1. 1888	„ 4 „	-	-	-	1,280	
October 1. 1888	„ 4 „	-	-	-	1,280	
April 1. 1889	„ 4 „	-	-	-	1,280	
October 1. 1889	„ and Bonus 4 and 1 per cent.	-	-	-	1,600	
April 1. 1890	„ 4 per cent.	-	-	-	1,280	
October 1. 1890	„ and Bonus 4 and 1 per cent.	-	-	-	1,600	
April 1. 1891	„ 4 per cent.	-	-	-	1,280	
October 1. 1891	„ 4 „	-	-	-	1,280	
					<u>\$50,240</u>	

10

We certify that the dividends paid by Molsons Bank on the several dates above mentioned were as set forth in the above statement prepared by us.

Montreal, 25th January 1892.

(Signed) W. J. FENWICK, Broker.  
G. W. SIMPSON, Stockbroker.

(Endorsed) Plaintiffs' Exhibit No. 2 filed at Enquête. Filed 17th February 1892.

(Paraphed) G. H. K. Dep. P.

Schedule No. 38.

20 For value received from W. H. Kerr tutor and Alex. Molson trustee of Montreal. We do hereby assign and transfer unto the said W. H. Kerr tutor and A. Molson trustee, six hundred and forty shares (on each of which has been paid fifty dollars currency amounting to the sum of thirty-two thousand dollars) in the capital stock of the Molsons Bank subject to the rules and regulations of the said Bank.

Witness our hands at the said Bank this fifth day of April in the year one thousand eight hundred and seventy-one.

(Signed) W. MOLSON. } Executors estate  
(Signed) ALEX. MOLSON. } late Hon. Jno. Molson.

30 We do hereby accept the foregoing assignment of six hundred and forty shares in the stock of the Molsons Bank assigned to us, as above mentioned, at the Bank this fifth day of April one thousand eight hundred and seventy-one.

(Signed) WILLIAM H. KERR, Tutor.  
(Signed) ALEX. MOLSON, Trustee.

(Correct copy.)

H. MARKLAND MOLSON, Acct.

(Endorsed) Plaintiffs' Exhibit No. 3.

Filed 17 Feb. 1892.

(Paraphed) G. H. K. Dep. P. S. C

No. 27.  
Copy of  
Transfer of  
640 shares,  
by Wm.  
Molson and  
Alexander  
Molson,  
Executors of  
Estate Hon.  
John Molson  
to W. H.  
Kerr, Tutor,  
and Alex-  
ander  
Molson,  
Trustee,  
dated 5th  
April 1871  
(Plaintiffs'  
Exhibit  
No. 3 at  
Enquête,  
filed 17th  
Feb. 1892).

RECORD.

Schedule No. 39.

No. 28.  
Copy of  
Transfer of  
640 shares  
by William  
Molson and  
Alexander  
Molson,  
Executors of  
late Hon.  
John Molson  
to Alex.  
Molson,  
dated 5th  
April 1871  
(Plaintiffs'  
Exhibit  
No. 4, at  
Enquête).

For value received from Alex. Molson of Montreal do hereby assign and transfer unto the said Alex. Molson six hundred and forty shares on each of which has been paid fifty dollars currency amounting to the sum of thirty-two thousand dollars in the capital stock of the Molsons Bank subject to the rules and regulations of said Bank.

Witness our hands at the said Bank this fifth day of April in the year one thousand eight hundred and seventy-one.

(Signed) WILLIAM MOLSON } Executors late  
(Signed) ALEX. MOLSON } Hon. John Molson. 10

I do hereby accept the foregoing assignment of six hundred and forty shares in the stock of the Molsons Bank assigned to me as above mentioned at the Bank this fifth day of April one thousand eight hundred and seventy-one.

(Signed) ALEX. MOLSON.

Correct copy.

(Signed) H. MARKLAND MOLSON, Acct.

(Endorsed) Plaintiffs Exhibit at Enquête No. 4.

Filed 17 Feb. 1892.

(Paraphed) G. H. K. Dep. P. S. C.

No. 29.  
Copy of  
Transfer of  
640 shares  
by Wm.  
Molson and  
Alex.  
Molson to  
J. D. Molson,  
Tutor and  
Curator,  
dated 5th  
April 1871  
(Plaintiffs'  
Exhibit  
No. 5 at  
Enquête,  
filed 17th  
Feb. 1892).

Schedule No. 40.

20

For value received from Capt. Jos. D. Molson tutor and curator of Montreal do hereby assign and transfer unto the said J. D. Molson tutor six hundred and forty shares (on each of which has been paid fifty dollars currency amounting to the sum of thirty-two thousand dollars) in the capital stock of the Molsons Bank subject to the rules and regulations of the said Bank.

Witness our hands at the said Bank this fifth day of April in the year one thousand eight hundred and seventy-one.

(Signed) WILLIAM MOLSON } Executors estate  
(Signed) ALEX. MOLSON } late Hon. John Molson.

I do hereby accept the foregoing assignment of six hundred and forty shares in the stock of the Molsons Bank assigned to me as above mentioned at the Bank this fifth day of April one thousand eight hundred and seventy-one.

(Signed) J. D. MOLSON,  
Tutor and Curator.

Correct copy.

(Signed) H. MARKLAND MOLSON, Acct.

(Endorsed) Plaintiffs' Exhibit No. 5.

Filed 17 Feb. 1892.

Paraphed. G. H. K. Dep. P. S. C.

## Schedule No. 41.

For value received from John Molson of Montreal, we do hereby assign and transfer unto John Molson six hundred and forty shares (on each of which has been paid 50 dollars currency amounting to the sum of thirty-two thousand dollars) in the capital stock of the Molsons Bank subject to the rules and regulations of the said Bank.

Witness our hands at the said Bank this fifth day of April in the year one thousand eight hundred and seventy-one.

10 (Signed) WILLIAM MOLSON } Executors of estate  
(Signed) ALEX. MOLSON } late Hon. John Molson.

I do hereby accept the foregoing assignment of six hundred and forty shares in the stock of the Molsons Bank, assigned to me as above mentioned at the Bank this fifth April one thousand eight hundred and seventy-one.

(Signed) JNO. MOLSON.

Correct copy.

(Signed) H. MARKLAND MOLSON, Acct.

Endorsed. Plaintiffs' Exhibit at Enquête No 6.  
Filed 17 Feb. 1892.

(Paraphed) G. H. K. Dep. P. S. C.

RECORD.

No. 30.  
Copy of  
Transfer of  
640 shares,  
by William  
Molson and  
Alexander  
Molson to  
John  
Molson,  
dated 5th  
April 1871  
(Plaintiffs'  
Exhibit  
No. 6 at  
Enquête,  
filed 17th  
Feb. 1892).

No. 31.  
Copy of  
Transfer of  
640 shares  
by William  
Molson and  
Alexander  
Molson to  
Sam. E.  
Molson,  
Tutor and  
Trustee, and  
John  
Crawford,  
Trustee,  
dated 11th  
May 1871  
(Plaintiffs'  
Exhibit  
No. 7 at  
Enquête,  
filed 17th  
Feb. 1892).

20

## Schedule No. 42.

For value received from Samuel E. Molson tutor and trustee and John Crawford trustee of Montreal, we do hereby assign and transfer unto the said Samuel E. Molson tutor and trustee and John Crawford trustee six hundred and forty shares (on each of which has been paid fifty dollars currency amounting to the sum of thirty-two thousand dollars) in the capital stock of the Molsons Bank subject to the rules and regulations of the said Bank.

Witness our hands at the said Bank this (11th) eleventh day of May in the year one thousand eight hundred and seventy-one.

30 (Signed) WILLIAM MOLSON } Acting Executors of Estate of  
(Signed) ALEX. MOLSON } late Hon. John Molson.

RECORD.

No. 31.  
Copy of  
Transfer of  
640 shares  
by William  
Molson, &c.  
—continued.

We do hereby accept the foregoing assignment of six hundred and forty shares in the stock of the Molsons Bank assigned to us as above-mentioned at the Bank this eleventh day of May one thousand eight hundred and seventy-one.

(Signed) SAM. E. MOLSON, Tutor and Trustee.  
(Signed) JNO. CRAWFORD, Trustee.

Correct Copy.

(Signed) H. MARKLAND MOLSON, Accountant.

Endorsed. Plaintiffs' Exhibit No. 7.

Filed 17th February 1892.

10

(Paraphed.) G. H. K. Dep. P. S. C.

## Schedule No. 43.

Executors of the late Hon. Jno. Molson.

In account with the Molson's Bank, Montreal.

No. 32.  
Statement  
showing  
Account of  
the Exe-  
cutors of  
the late Hon.  
John Molson  
with  
Molsons  
Bank  
(Plaintiffs'  
Exhibit  
No. 8 at  
Enquête).

Date.	Particulars.	Amount Shares.	Date.	Particulars.	Amount.
1871. Apl. 5	To W. H. Kerr, Tutor, and Alex. Molson, Trustee - -	640	1866. May 17 -	By Hon. Jno. Molson	3,200
" 5	Alex. Molson - - -	640			
" 5	Jos. D. Molson - - -	640			
" 5	John Molson - - -	640			
May 11	S. E. Molson, Tutor and Trustee, and John Crawford, Trustee -	640			
		3,200			3,200

20

Correct copy.

(Signed) H. MARKLAND MOLSON, Acct.

(Endorsed.) Plaintiffs' Exhibit at Enquête No. 8.

Filed 17 Feb. 1892.

(Paraphed.) G. H. K. Dep P.

Schedule No. 44.  
Estate John Molson.  
Wm. and Alex. Molson, Exors.

RECORD.

No. 33.  
Statement showing Account of estate John Molson with Wm. and Alex. Molson, Executors (Plaintiffs' Exhibit No. 9 at Enquête).

Date.		Dr.	Cr.	Dr. or Cr.	Balance.			
1871.			From No.	10	Cr.	27	780	81
Mch. 1	Dep.		75	55		27	856	36
8	"		10			27	866	36
14	"		29	97		27	896	33
15	"		200			28	096	33
17	"		36			28	132	33
28	ch. 797	4217				23	914	92
29	788	165						
	9	19						
	90	11						
	1	21						
	2	50						
	3	8						
	4	5						
	5	50						
	6	500				23	082	67
Apl. 1	Dep.		6400			29	482	67
4	801	1280				28	202	67
5	3	1280						
	800	1280						
	4	1280						
	799	8105	19			16	257	48
12	Dep.		153	82		16	411	33
May 11	805	9437	31			6	963	99
13	2	1280				5	693	99
25	6	3837	31			1	856	68
June 17	7	1856	68					

Correct copy.

(Signed) H. MARKLAND MOLSON, Acct.

(Endorsed.) Plaintiffs' Exhibit at Enquête No. 9.

Filed 17th Feb. 1892.

(Paraphed.) G. H. K. Dep. P.

RECORD.

## Schedule No. 45.

## Dividends paid by The Molsons Bank since October 1871.

No. 34.  
Statement  
showing  
Dividends  
paid by the  
Molsons  
Bank since  
Oct. 1871  
(Plaintiffs'  
Exhibit  
No. 10).

Date.	No. of Dividend.	Rate.	Amount on 640 shares.
Oct. 2 1871	32nd	4	1280
Apl. 1 1872	33	4	1280
Oct. 1 1872	34	4	1280
Apl. 1 1873	35	4	1280
Oct. 1 "	36	4	1280
Apl. 1 1874	37	4	1280
Oct. 1 "	38	4	1280
Apl. 1 1875	39	4	1280
Oct. 1 "	40	4	1280
Apl. 1 1876	41	4	1280
Oct. 2 "	42	4	1280
Apl. 2 1877	43	4	1280
Oct. 1 "	44	4	1280
Apl. 1 1878	45	3	960
Oct. 1 "	46	3	960
Apl. 1 1879	47	3	960
Oct. 1 "	48	3	960
Apl. 1 1880	49	3	960
Oct. 1 "	50	3	960
Apl. 1 1881	51	3	960
Oct. 1 "	52	3	960
Apl. 1 1882	53	3½	1120
Oct. 2 "	54	3½	1120
Apl. 2 1883	55	4	1280
Oct. 1 "	56	4	1280
Apl. 1 1884	57	4	1280
Oct. 1 1884	58	4	1280
Apl. 1 1885	59	4	1280
Oct. 1 "	60	4	1280
Apl. 1 1886	61	4	1280
Oct. 1 "	62	4	1280
Apl. 1 1887	63	4	1280
Oct. 1 "	64	4	1280
Apl. 1 1888	65	4	1280
Oct. 1 "	66	4	1280
Apl. 1 1889	67	4	1280
Oct. 1 "	68	4	1280
" 1 "	& Bonus	1	320
Apl. 1 1890	69	4	1280
Oct. 1 "	70	4	1280
" 1 "	& Bonus	1	320
Apl. 1 1891	71	4	1280
Oct. 1 "	72	4	1280

(Endorsed) Plaintiffs' Exhibit, No. 10. Filed at Enquête.  
Filed 26 January 1892. Filed 17 Feb. 1892.

(Paraphed.) G. H. K. Dep. P.



## Schedule No. 46.

Extract from the register of the Acts of Baptisms, Marriages and Burials of Christ Church Cathedral Montreal for the year one thousand eight hundred and sixty-two.

Mary Ann Elizabeth Molson widow of the late Hon. John Molson of Montreal died on the fifth day of May one thousand eight hundred and sixty-two, aged sixty-two years and was buried on the ninth following, by me—

(Signed) JOHN BETHUNE, Rector.

Witnesses present—

10 (Signed) W. H. HUMPHREYS.  
ISAAC SHEARMAN.

We, the undersigned, Deputy Prothonotary of the Superior Court for Lower Canada, in the District of Montreal, do hereby certify that the foregoing is a true extract from the register of the Actes of Baptisms, Marriages and Burials of the in the said District. The said register deposited in our office.

Given at Montreal, this sixth day of April in the year of our Lord one thousand eight hundred and ninety-one.

(Signed) J. E. CHAMPOUX, Dep. P. S. C.

20 (On the back). The 9th day of May 1892.

Extract of Burial of Mary Ann Elizabeth Molson widow Hon. John Molson.

(Endorsed). Plaintiffs' Exhibit at Enquête No. 11.

Filed 17th February 1892.

(Paraphed) G. H. K., Dep. P. S. C.

## Schedule No. 47.

On this day the twenty-seventh of month of March, in the year of Our Lord one thousand eight hundred and seventy-one

30 Before the undersigned Public Notary duly commissioned and sworn in and for that part of the Dominion of Canada which heretofore constituted the Province of Lower Canada, now the Province of Quebec, residing and practising in the City of Montreal, in the said Province

Personally came and appeared William Molson of Montreal in the District of Montreal Esquire, and Alexander Molson of Montreal, aforesaid, Esquire, in their capacity of acting executors and trustees of the estate and effects of the late Honourable John Molson in his lifetime of Montreal in Canada, Esquire, of the one part

## RECORD.

No. 35.  
Extract of Burial of late Mary Ann Elizabeth Molson, widow of the late Hon. John Molson, who died on the 5th May 1862 (Plaintiffs' Exhibit No. 11 at Enquete.)

No. 36.  
Agreement and Conveyance from Wm. and Alex. Molson, Executors to Joseph Draham Molson (Phillips, N.P.), dated 27th March 1871 (Plaintiffs' Exhibit No. 12 at Enquete.)

## RECORD.

No. 36.  
Agreement  
and Con-  
veyance from  
Wm. and  
Alex.  
Molson,  
Executors to  
Joseph  
Dinham  
Molson  
Phillips,  
N.P.), dated  
27th March  
1871  
(Plaintiffs'  
Exhibit  
No. 12 at  
Enquête)—  
*continued.*

And Joseph Dinham Molson of Lennoxville, in the province of Quebec, Esquire, as well individually as in his several capacities of tutor to Mary Ann Eliza Molson, Catherine Elizabeth Molson, Sarah Ellen Molson, Henrietta Eleanor Molson, Anne Emily Molson, John Dinham Molson, and Mabel Isabel Molson, minors, sole existing issue of his marriage with Dame Catherine Eliza Day his wife and of curator to the substitution of his share of the residue of the estate of the said late Honourable John Molson created by the will of the said Honourable John Molson party hereto of the second part

Which said parties declared to me notary that whereas the said Honourable John Molson, in his last will and testament made and executed at Montreal aforesaid the twentieth day of April in the year of our Lord one thousand eight hundred and sixty before three witnesses, bequeathed and devised his estate and effects in manner and form as in the said last will and testament contained

And after making divers special legacies, did further bequeath and devise as follows, namely:—

“ And as to the residue of my estate real and personal wheresoever the same may be, and of whatsoever the same may consist, of which I may die possessed, or to which I may then be entitled, I give devise and bequeath the same to my said brother William Molson of the said City of Montreal, Esquire, Mary Ann Elizabeth Molson, my beloved wife and Alexander Molson, my youngest son, now living the survivors and survivor of them, and the heirs and assign of the survivor of them upon the several trusts hereinafter declared that is to say upon trust: Firstly, to hold administer and manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease and further if my said wife be living at the expiration of that term and shall have acceded to the condition expressed in the sixth section of this my will until the expiration of one year from and after her decease.”

“ Secondly: To sell and convey all such parts of my real estate as are not hereinbefore specifically devised and as they shall deem it advantageous to my estate to sell and to grant deeds of sale and conveyance of the same to receive and grant receipts for the purchase moneys, to invest the purchase moneys and all other moneys arising from or accruing to my estate and not already invested on good and sufficient security either by way of hypothec or mortgage of or on real estate or by the purchase of Government stocks or stocks of sound incorporated banks so as to produce interest dividends or profits to secure the regular payment of the annuity payable to my said wife under her said marriage contract and the additional annuity hereinbefore bequeathed to her and generally to comply with and fulfil all other the requirements of this my will: and thirdly at or as soon as practicable after the expiration of the term of the said trust to account for and give up the said residue as the same shall then be found to my residuary devisees and legatees hereinafter named.”

And whereas the said Dame Mary Ann Elizabeth Molson the wife of the said late Honourable John Molson departed this life on or about the fifth day of May eighteen hundred and sixty-two, and the said parties of the first part have

since acted as surviving and acting trustees and executors of the said last will. RECORD.

And whereas the said parties of the first part have held administered and managed the residue of the said estate from and after the date of the decease of the said Honourable John Molson until the present time and have sold such parts of the real estate of the said Honourable John Molson as were not by the said will specifically devised and as they deemed advantageous and have granted deeds of sale and conveyances of the same and have received the purchase money thereof and made such investments thereto and of the proceeds  
 10 of the said estate as were in the opinion of the said trustees judicious and have paid such annuities special legacies debts expenses of management and other sums of money as were required in the due administration of the said estate and in the conduct and management thereof.

And whereas the said parties of the first part have accounted for the management of the said trust and the administration thereof and have rendered a full account in detail to the said party of the second part and to all other parties interested therein of their gestion and management of the said estate and have communicated all vouchers thereof which account is deposited in the office of me the undersigned notary for reference by whom it may concern signed by the  
 20 said parties thereto *ne varietur*.

And whereas by the said account it appears as the parties hereto declare the fact is that the mass of the residue of the said estate as it now exists consists of the several assets mentioned and detailed in the Schedule number one hereto annexed whereof the share of the said party of the second part consists of moneys and securities for money amounting to the sum of eighty thousand two hundred and sixty-three dollars and twenty cents currency as appears by the tabular statement of the division of the said residue also annexed hereto and numbered schedule number two which said share the said parties hereto have agreed shall be paid and delivered over to the said party of the second part for  
 30 the purposes detailed in the said will Now therefore these presents and I the said notary witness that the said parties of the first part have transferred assigned and conveyed and by these presents do transfer assign and convey unto the said party of the second part the whole of the said several items and assets securities and property detailed in the said schedule number two hereto annexed the said party of the second part accepting thereof for himself and representatives the said several assets securities and property being hereby so transferred and conveyed to the said party of the second part to the end that the same shall be received used and enjoyed in the manner provided by the thirteenth clause of the said will to wit to the end that the revenue thereof shall be enjoyed by the  
 40 said party of the second part during his life and that after his death his share shall become and be for ever the property of his lawful issue in the proportion of one share to each daughter and two shares to each son subject however to the right of usufruct thereof to his widow for life or for so long as she shall remain his widow with power however to the said party of the second part by his last will and testament or by a codicil or codicils thereto but not otherwise to alter the proportions in which by the foregoing bequest and devise his share in the said residue is by the said will bequeathed and devised to his lawful issue

No. 36.  
 Agreement  
 and Con-  
 veyance from  
 Wm. and  
 Alex.  
 Molson,  
 Executors to  
 Joseph  
 Dinham  
 Molson  
 (Phillips,  
 N.P.), dated  
 27th March  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 12 at  
 Enquête)—  
*continued.*

**RECORD.**

No. 36.  
 Agreement  
 and Con-  
 veyance from  
 Wm. and  
 Alex.  
 Molson,  
 Executors to  
 Joseph  
 Dinham  
 Molson  
 (Phillips,  
 N.P.), dated  
 27th March  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 12 at  
 Enquête)—  
*continued.*

and even to will and direct that one or more of his said lawful issue shall not be entitled to any part or portion of the said share of the said residue.

And further upon condition that in default of such issue the share of the said party of the second part hereby conveyed to him in his said several capacities shall pass to such of the collateral relations of the said party of the second part as shall or may become entitled thereto under or by virtue of the provisions of the said will.

And the said party of the second part as well individually as in his said capacity hereby declares that he accepts the accounting of the said executors and trustees as sufficient and that he is content and satisfied with their administration and gestion of the estate and effects of the late Honourable John Molson and with the account so rendered thereof and with the share hereby set apart and appropriated to him and he now hereby fully and completely in his said several capacities acquits exonerates and discharges the said parties of the first part of all other and further liability and responsibility to him or his heirs or assigns in the premises from this day henceforth and for ever. 10

And it is hereby further agreed that if at any time hereafter any further conveyance or transfer of any of the said securities for money be required the trustees and executors shall execute the same on the request and at the cost and charges of the said party of the second part. 20

And for the purpose of more effectually conveying to the said party of the second part the several effects rights and properties mentioned in the said Schedule 2 it is hereby further declared and agreed that the said parties of the first part have transferred and conveyed and do hereby transfer and convey to the said party of the second part accepting hereof in his said several capacities.

1. The one undivided fifth part and portion of that certain debt or sum of money amounting to the sum of four thousand dollars currency due and payable on the eighteenth day of December now next ensuing to the estate of the said late Honourable John Molson by Léandre Chaput of the said city of Montreal Esquire merchant under and by virtue of a certain deed of sale from the said parties of the first part to him the said Léandre Chaput passed before James Smith notary public and bearing date the thirty-first of December eighteen hundred and sixty-six, together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothecs appertaining thereto. 30

2. The one undivided fifth part and portion of that certain debt or sum of money amounting in all to the sum of five thousand five hundred and eighty-three dollars and ninety-six cents current money of Canada to become due and payable to the estate of the said late Honourable John Molson by Henry Starnes of the said city of Montreal Esquire as follows three thousand nine hundred and ninety-nine dollars and fifteen cents as being the amount of his five several promissory notes each for the sum of seven hundred and ninety-nine dollars and eighty-three cents and to fall due respectively on the fourth days of the months of April May June July and August now next ensuing and the balance or remaining sum of one thousand five hundred and eighty-four dollars and eighty-one cents as the amount of the last instalment to become due and payable on the eleventh day of December next 1871 under and by virtue of a certain 40

deed of obligation and mortgage from him the said Henry Starnes to the said estate of the said late Honourable John Molson passed before James Smith notary public and bearing date the fourteenth day of December eighteen hundred and sixty-eight together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothecs appertaining thereon.

RECORD.

—  
No. 36.  
Agreement  
and Con-  
veyance from  
Wm. and  
Alex.  
Molson,  
Executors to  
Joseph  
Dinham  
Molson  
(Phillips,  
N.P.), dated  
27th March  
1871  
(Plaintiffs'  
Exhibit  
No. 12 at  
Enquête)—  
*continued.*

3. The one undivided fifth part and portion of that certain sum of twelve hundred dollars current money of Canada being the amount of a certain *constitut*, payable to said estate of the said late Honourable John Molson by  
10 George Rogers of the said city of Montreal under and by virtue of a certain deed of sale to him from the said late Honourable John Molson passed before William Ross and his colleague notaries public and bearing date the twentieth day of March eighteen hundred and forty-three together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothecs appertaining thereto.

4. The one undivided fifth part or portion of that certain lot of land and premises situated in the town of Three Rivers in the said province of Quebec and described in the deed of purchase thereof by the said late Honourable John Molson from the sheriff of the district of Three Rivers of date the fourth  
20 of April eighteen hundred and forty-two in the French language as follows :

“ Un lot de terre sis et situé en la ville des Trois Rivières de forme  
“ irrégulière contenant environ cent pieds de front plus ou moins sur la rue du  
“ Fleuvée joignant d'un côté au sud-ouest à Dame Angeline Brown et de  
“ l'autre côté au nord-est à la rue du Platon (sur laquelle ligne il à environ  
“ soixante pieds de profondeur plus ou moins et en profondeur à Ezéchiél  
“ Hart Ecuier avec deux maisons une boutique, deux étables, un hangar et  
“ autres dépendances dessus construites.”

5. The one undivided fifth part or portion of that certain debt or sum of three thousand three hundred and sixty-three dollars and thirty-three cents due  
30 to the said estate of the said late Honourable John Molson by the estate of the late John Pattan, deceased, in his lifetime of Montreal aforesaid importer of China glass and earthenware as and for rent of certain property situated in St. James Street in the West Ward in the said city of Montreal together with with one undivided fifth of all rights and privileges held and possessed by the said estate in respect thereof or as security therefor.

And it is hereby further agreed that the present transfer and conveyance is thus made upon condition to which the said party of the second part agrees that he will bear and pay one fifth part of the amount which may hereafter be found to be due by the said estate of the said late Honourable John Molson in  
40 respect of the widening of little St. James Street and of the proceedings regarding the same.

And the said party of the second part hereby further acknowledges to have received from the said parties of the first part in full the annuity granted and bequeathed by the said late Honourable John Molson to the said party of the second part in and by the twelfth clause of the said last will and testament in manner and form and upon the conditions in the said clause contained.

And the present transfer and conveyance is further made upon the express

RECORD.

No. 36.  
 Agreement  
 and Con-  
 veyance from  
 Wm. and  
 Alex.  
 Molson,  
 Executors to  
 Joseph  
 Dinham  
 Molson  
 (Phillips,  
 N.P.), dated  
 27th March  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 12 at  
 Enquête)—  
*continued.*

condition as provided for by the eighteenth clause of the said will and as an essential condition of the present transfer that all the estate interest and property whether by way of usufruct or otherwise and every part and portion thereof which the said Dame Catherine Eliza Day or the said Joseph Dinham Molson individually may in anywise take or receive under these presents and all interests or revenues to arise therefrom shall be and remain for ever exempt from all liability for the debts present or future of them or either of them and shall be absolutely insaisissable for any such debts or for any other cause whatever and shall be held and be taken as being to all intents and purposes *legs d'aliments* by the said late Honourable John Molson made and granted in favour of them and of each of them and shall moreover not be susceptible of being by them or either of them assigned or otherwise alienated for any purpose or cause whatever. 10

The sum of twenty-nine thousand two hundred and eighty-four dollars and eleven cents being the price of certain property in St. James Street in the said city of Montreal as established by a deed of sale thereof from the said parties of the first part to the said party of the second part passed before me notary bearing even date herewith the price whereof is hereby accepted as cash by the said party of the second part as part of his share in the said estate. 20

The pew number six in Christ Church Cathedral in Montreal the rent of which for the future the said party of the second part hereby binds and obliges himself to pay to the discharge of the said estate and succession.

The rights and claims of the said parties of the first part in their said capacities in and to that certain real estate in the township of Portland in the county of Ottawa in the said Province being known and distinguished as lots numbers eleven and twelve in the second range containing by admeasurement two hundred acres of land more or less and of the south half of lot number eleven in the third range of said township of Portland containing by admeasurement one hundred acres of land more or less, and containing altogether five hundred acres of land more or less. 30

And for the execution of these presents and of every the premises the said parties have elected domicile at their ordinary places of abode above mentioned where &c.

Done and passed at the city of Montreal in the office of W. A. Phillips the said notary under the number three thousand one hundred and sixteen and signed by the said parties hereto with and in the presence of me notary subscribing after these presents had been to them first duly read.

(Signed)	WILLIAM MOLSON.	} Acting as executors of estate } of late Hon. John Molson.	40
"	ALEX. MOLSON.		
"	J. D. MOLSON.		
"	W. A. PHILLIPS, N.P.		

A true copy of the original hereof which remains of record in my office.

(Signed) W. A. PHILLIPS.

Schedule 1.

RECORD.

Schedule of Assets, Estate of the late Hon. John Molson, 25th March 1871.

No. 36.  
Agreement  
and Con-  
veyance from  
Wm. and  
Alex.  
Molson,  
Executors to  
Joseph  
Dinham  
Molson  
(Phillips,  
N.P.), dated  
27th March  
1871  
(Plaintiffs'  
Exhibit  
No. 12 at  
Enquête)—  
*continued.*

	Molsons Bank Stock - - - -	3,200 shares	160,000	
	Mechanics " " - - - -	100 "	5,000	
	Champlé and St. L.R. Rd. Stock - -	285 "	11,400	
	Quebec Fire Ins. Co. " "	19 "	2,470	
	Provincial Bank Stock - - - -	30 "	585	50
	Corporation Bonds - - - -	-	5,000	
	Mortgage St. Peter Street property - -	-	4,000	
10	" " Garden - - - -	-	1,584	81
	5 notes H. Starnes - - - -	-	3,999	15
	Mortgage M. Mill - - - -	-	2,000	
	Matilda Farm - - - -	-	2,000	
	Three Rivers lot - - - -	-	3,500	
	Constitut G. Rogers - - - -	-	1,200	
	St. James Street property sold to S.E.M. -	-	56,900	
	Do. do. 3 stores - - - -	-	90,545	75
	Cash - - - -	-	50,370	83
	St. Michael Road Trust, 10 shares - -	-	760	
			<hr/>	
20			\$401,316	04

There is a deposit in Mechanics' Savings Department bearing 6 per cent. interest to pay legacies of 100% each with interest from date of decease of testator to grandchildren, viz. :

	John Molson - - - -	2	
	Estate late G. E. Molson - - - -	3	
	Capt. G. D. Molson - - - -	3	
	Alex. Molson - - - -	2	
			6,524 60

30 Schedule number one referred to in deed of agreement and conveyance from William Molson and Alexander Molson esquire acting executors and trustees estate late Hon. John Molson to Joseph Dinham Molson Esquire passed before W. A. Phillips Notary Public and bearing date this twenty-seventh day of March eighteen hundred and seventy-one.

*In test. veritatis.*  
 (Signed) WILLIAM MOLSON } Acting executors of estate of  
 " ALEX. MOLSON } late Hon. John Molson.  
 " G. D. MOLSON.  
 " W. A. PHILLIPS, N.P.

(A true copy.) (Signed) W. A. Phillips, N.P.

RECORD.

Schedule 2.

No. 36.  
Agreement  
and Con-  
veyance from  
Wm. and  
Alex.  
Molson,  
Executors to  
Joseph  
Dinham  
Molson  
(Phillips,  
N.P.) dated  
27th March  
1871  
(Plaintiffs'  
Exhibit  
No. 12 at  
Enquête)—  
*continued.*

Schedule of Assets of the Estate of the late Hon. John Molson proposed to be apportioned to Captain J. Dinham Molson.

640 shares	Molsons Bank stock par value	-	-	-	\$32,000		
20	„ Mechanics	„	-	-	-	1,000	
57	„ Champlain and St. L. R. R.	value	200				
	each $\frac{1}{5}$	-	-	-	-	2,280	
3	„ Quebec Fire Ins. Co. Stock	-	-	-	-	390	
6	„ Provincial „ „ „	on which has been					
	paid	-	-	-	-	117	10
2	„ St. Michel Road Trust Stock	-	-	-	-	152	
	Corporation Bond	-	-	-	-	1,000	
$\frac{1}{5}$	Mortgage (L. Chaput) St. Peter St. property	-	-	-	-	800	
$\frac{1}{5}$	(H. Starnes) Garden	„	-	-	-	316	96
$\frac{1}{5}$	„ Notes „ „	-	-	-	-	799	83
$\frac{1}{5}$	Lot Three Rivers (estimated at \$3,500)	-	-	-	-	700	
$\frac{1}{5}$	Constitut. G. Rogers proportion of \$1,200	-	-	-	-	240	
	Pew Christ Church Cathedral Rights to property						
	in Buckingham House No. 2 (G. Patton & Co.)						
	St. James Street (*)	-	-	-	-	29,284	11
	Cash proportion of	-	-	-	-	11,183	20
						<u>\$80,263</u>	<u>20</u>

And the  $\frac{1}{5}$ th of the net amount of the sum of \$3,363 $\frac{33}{100}$  remaining unpaid by the estate of the late John Patton. The whole subject to the liability of the estate in respect of the corporation suit respecting the widening of Little St. James Street.

Schedule number two, or tabular statement referred to in deed of agreement and conveyance from William Molson and Alexander Molson, esquire, 30 acting executors and trustees estate late Honourable John Molson to Joseph Dinham Molson esquire passed before W. A. Phillips, Notary Public, and bearing date the twenty-seventh day of March eighteen hundred and seventy-one.

*In test. veritatis.*

(Signed) WILLIAM MOLSON } Acting executors of estate of  
 „ ALEX. MOLSON } late Hon. John Molson.  
 „ G. D. MOLSON.  
 „ W. A. PHILLIPS, N.P.

(A true copy.) (Signed) W. A. Phillips, N.P.

40

(\*) The above house was purchased by Captain G. D. Molson, at auction on 10th January 1871 for the sum of \$29,284. 11 which sum he assumes as cash.



(On the back.) 3116, 27th March 1871. Agreement and conveyance from William Molson and Alexander Molson esquire acting executors and trustees estate late Honourable John Molson to Joseph Dinham Molson. RECORD.

(Endorsed) Plaintiffs' Exhibit No. 12 at Enquête.  
 (Filed 17th February 1892.)  
 (Paraphed) G. H. K., D. P. S. C.

Schedule No. 48.

On this twenty-seventh day of the month of March in the year of our Lord one thousand eight hundred and seventy-one

10 Before the undersigned Public Notary duly commissioned and sworn in and for that part of the Dominion of Canada which heretofore constituted the Province of Lower Canada, now the Province of Quebec, residing in the city of Montreal in the said province

Personally came and appeared William Molson of Montreal in the district of Montreal, esquire, and Alexander Molson of Montreal aforesaid esquire in their capacity of acting executors and trustees of the estate and effects of the late Honourable John Molson in his lifetime of Montreal in Canada, esquire, of the one part

20 And William H. Kerr of Montreal aforesaid esquire advocate in his capacity of tutor to Mary Ann Elizabeth John Dinham Alexander Leopold Sarah Hariett Jesse Fanny Maria and Eva Maude Molson minors sole existing issue of the marriage of the late George Elsdale Molson with Dame Harriett Mary Ann Kerr his wife of the second part

And the said William H. Kerr and Alexander Molson of Montreal aforesaid, esquires, parties hereto of the third part

Which said parties declared to me notary

30 That whereas the said Honourable John Molson, in his last will and testament made and executed at Montreal aforesaid the twentieth day of April in the year of our Lord one thousand eight hundred and sixty before three witnesses bequeathed and devised his estate and effects in manner and form as in the said last will and testament contained, and after making divers special legacies, did further bequeath and devise as follows :—

40 “ And as to the residue of my estate real and personal wheresoever the same may be and of whatsoever the same may consist, of which I may die possessed or to which I may then be entitled, I give devise and bequeath the same to my said brother William Molson of the said city of Montreal esquire Mary Ann Elizabeth Molson my beloved wife and Alexander Molson my youngest son now living the survivors and survivor of them, and the heirs and assigns of the survivor of them upon the several trusts hereinafter declared that is to say upon trust ”

No. 37.  
 Agreement and Conveyance from William and Alexander Molson, Executors and Trustees of the Estate late Hon. John Molson, to Wm. H. Kerr and Alex. Molson, dated 27th March 1871 (Plaintiffs' Exhibit No. 13 at Enq.).

## RECORD.

No. 37.  
Agreement  
and Con-  
veyance from  
William and  
Alexander  
Molson,  
Executors  
and Trustees  
of the  
Estate  
late Hon.  
John Molson,  
to Wm. H.  
Kerr and  
Alex.  
Molson,  
dated 27th  
March 1871  
(Plaintiffs'  
Exhibit  
No. 13 at  
Enq.)—con-  
tinued.

“Firstly. To hold administer and manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease and further if my said wife be living at the expiration of that term and shall have acceded to the condition expressed in the sixth section of this my will until the expiration of one year from and after her decease.”

“Secondly. To sell and convey all such parts of my real estate as are not hereinbefore specifically devised and as they shall deem it advantageous to my estate to sell and to grant deeds of sale and conveyance of the same to receive and grant receipts for the purchase moneys to invest the purchase moneys and all other moneys arising from or accruing to my estate and not already invested in good and sufficient security, either by way of hypotheque or mortgage of, or on real estate or by the purchase of Government stocks or stocks of sound incorporated Banks so as to produce interest dividends or profits to secure the regular payment of the annuity payable to my said wife under her said marriage contract, and the additional annuity hereinbefore bequeathed to her and generally to comply with and fulfil all other the requirements of this my will, and

“Thirdly. At or as soon as practicable after the expiration of the term of the said trust to account for and give up the said residue as the same shall then be found to my residuary devisees and legatees herein-after named.”

And whereas the said Dame Mary Ann Elizabeth Molson the wife of the said late Honourable John Molson departed this life on or about the fifth day of May, eighteen hundred and sixty-two whereby the said parties of the first part became the sole surviving and acting trustees and executors of the said last will

And whereas the said parties of the first part have held administered and managed the residue of the said estate to the best advantage from and after the date of the decease of the said Honourable John Molson until the present time, and have sold such parts of the real estate of the said Honourable John Molson as were not by the said will specifically devised and as they deemed advantageous, and have granted deeds of sale and conveyance of the same and have received the purchase money thereof and made such investments thereof and of the proceeds of the said estate as were in the opinion of the said Trustees judicious and have paid such annuities special legacies debts expenses of management and other sums of money as were required in the due administration of the said estate and in the conduct and management thereof

And whereas as soon as practicable after the expiration of the term of the said trust mentioned in the said last will and testament the said parties of the first part have accounted for the management of the said trust and the administration thereof, and have rendered a full account in detail to the said party of the second part and to all other parties interested therein, of their gestion and management of the said estate and have communicated all vouchers thereof which account is deposited in the office of me the undersigned notary for reference by whom it may concern signed by the said parties thereto, *ne varietur*

And whereas by the said account it appears as the parties hereto declare the fact is that the mass of the residue of the said estate as it now exists consists of the several assets mentioned and detailed in the Schedule number one hereto annexed whereof the share of the said estate of the said late George Elsdale Molson as one of the heirs and residuary legatees of the said late Honourable John Molson consists of moneys and securities for money amounting to the sum of eighty thousand two hundred and sixty-three dollars and twenty cents as appears by the tabular statement of the division of the said residue also annexed hereto and numbered schedule number two which

10 said share the said parties hereto have agreed shall be paid and delivered over to the said parties of the third part for the purposes detailed in the said will.

Now therefore these presents and I the said notary witness

That the said parties of the first part have transferred assigned and conveyed and by these presents do transfer assign and convey unto the said parties of the third part the whole of the said several items and assets securities and properties detailed in the said schedule number two hereto annexed

The said parties of the third part accepting thereof for themselves and their representatives appointed or to be appointed as hereinafter provided

20 The said several assets securities and properties being hereby so transferred and conveyed to the said parties of the third part upon trust to the end that the same shall be received used and enjoyed in the manner provided by thirteenth clause of the said will to wit: To the end that the said share shall be and become the property of his lawful issue in the proportion of one share to each daughter and two shares to each son subject however to the right of usufruct thereof to his widow for life or for so long as she shall remain his widow

And whereas the said George Elsdale Molson departed this life on or about the twentieth of July eighteen hundred and sixty-six after having made

30 a last will and testament before witnesses to wit on the twenty-third day of March one thousand eight hundred and sixty-six but without having by the said will made any valid or binding change or disposition as to the said residue as he was empowered to do in some respects by the said last will of his said late father the said Honourable John Molson

And it is hereby further declared that the disposition of the said share of the said residue by these presents in the hands of the said parties of the third part is so made under the power conferred in and by the said last will and testament upon the said parties of the first part namely to provide against the risk of the capital of the share of the said George Elsdale Molson or of his widow

40 or children being lost or diminished in the hands of any holder thereof under substitution or as usufructuary thereof

And the said disposition is accepted by the said parties of the third part upon the terms and conditions following, that is to say, upon trust that they will faithfully diligently and carefully administer the same and will pay over the revenue thereof to the said Dame Harriet Mary Anne Kerr widow of the said George Elsdale Molson, during her life unless she shall marry again in which case the obligation to pay the revenue to her shall cease and determine

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to Wm. H.  
Kerr and  
Alex.  
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dated 27th  
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 tinued.

and afterwards to convey the capital thereof to the person or persons entitled thereto under and by virtue of the thirteenth clause of the said will

And it is hereby further declared and agreed by and between all the said parties hereto, that upon the death of the said Alexander Molson the said parties of the first part or such person or persons as shall then be representing the estate of the said late Honourable John Molson as the acting trustees or executors thereof shall have the power and it shall be his and their duty to name and appoint by a notarial instrument duly executed according to the laws of the Province of Quebec any fit or proper person to be trustee jointly with the tutor or other representative of the said estate of the said late George Elsdale Molson for the parties entitled to the said share in revenue and capital and in like manner and by a like instrument thereafter whenever the trustee so appointed shall die or become insolvent or resign the office of trustee it shall be the duty of the acting executors or trustees of the estate of the late Honourable John Molson to appoint another person to be trustee with such tutor or other representative thereafter under the provisions hereof

And if the said William H. Kerr shall die or be disqualified or resign the office of tutor and trustee under the provisions hereof a new tutor shall be appointed in his place and stead who shall take his place as trustee hereunder in his place and stead and if any of the children of the said late George Elsdale Molson shall then be of age then they conjointly with such tutor shall have power to name a trustee to be trustee under the provisions hereof jointly with the other trustee appointed as herein provided

And upon the appointment in any of the modes hereinbefore provided of a person to act as trustee hereunder such trustee shall be vested with all the powers enjoyed by his predecessor and shall be subject to the same obligations and shall perform the same duties

But in the case of the trustees hereby appointed or their successors in office being at any time or for any cause reduced to one such remaining trustee shall not have power to administer the said share or to draw the revenues thereof the power so to do being hereby intended to be exercised always by two trustees and never by one trustee alone

And the said party of the second part in his said capacity hereby declares that he accepts the accounting of the said executors and trustees as sufficient and that he is content and satisfied with their administration and gestion of the estate and effects of the late Honourable John Molson and with the account so rendered thereof and with the share hereby set apart and appropriated to him in his said capacity and he now hereby fully and completely in his said capacities acquits exonerates and discharges the said parties of the first part of all other or further liability and responsibility to him in his said capacity in the premises from this day henceforth and forever

And it is hereby further agreed that if at any time hereafter a further conveyance or transfer of any of the said securities for money be required the trustees and executors shall execute the same on the request and at the cost and charges of the said party of the second part :

And for the purpose of more effectually conveying to the said party of the second part the several effects rights and properties mentioned in the said

schedule number two it is hereby further declared and agreed that the said parties of the first part have transferred and conveyed and do hereby transfer and convey to the said party of the second part accepting hereof in his said several capacities

1. The undivided one-fifth part and portion of that certain debt or sum of money amounting to the sum of four thousand dollars current money of Canada due and payable on the eighteenth day of December now next ensuing to the estate of the said late Honourable John Molson by Leandre Chaput of the said city of Montreal Esquire merchant under and by virtue of a certain deed of sale from the said parties of the first part to him the said Leandre Chaput passed before James Smith Notary Public and bearing date the thirty-first December one thousand eight hundred and sixty-six together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypotheques appertaining thereto

2. The undivided one-fifth part and portion of that certain debt or sum of money amounting in all to the sum of five thousand five hundred and eighty-three dollars and ninety-six cents current money of Canada to become due and payable to the estate of the said late Honourable John Molson by Henry Starnes of the said city of Montreal Esquire as follows three thousand nine hundred and ninety-nine dollars and fifteen cents as being the amount of his five several promissory notes each for the sum of seven hundred and ninety-nine dollars eighty-three cents and to fall due respectively on the fourth days of the months of April May June July and August now next ensuing and the balance or remaining sum of one thousand five hundred and eighty-four dollars eighty-one cents as the amount of the last instalment to become due and payable on the eleventh day of December one thousand eight hundred and seventy-one under and by virtue of a certain deed of obligation and mortgage from him the said Henry Starnes to the said estate of the late Honourable John Molson passed before James Smith Notary Public and bearing date the fourteenth day of December one thousand eight hundred and sixty-eight together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypotheques appertaining thereto :

3. The one undivided fifth part and portion of that certain sum of one thousand two hundred dollars current money of Canada being the amount of a certain *constitut* payable to the said estate of the said late Honourable John Molson by George Rogers of the said city of Montreal under and by virtue of a certain deed of sale to him from the said late Honourable John Molson passed before William Ross and his colleague notaries public and bearing date the twentieth day of March one thousand eight hundred and forty-three together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypotheques appertaining thereto

4. The one undivided fifth part or portion of that certain lot of land and premises situated in the town of Three Rivers in the said Province of Quebec and described in the deed of purchase thereof by the said late Honourable John Molson from the Sheriff of the District of Three Rivers on the fourth day of April one thousand eight hundred and forty-two in the French language as follows :—

RECORD.

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Agreement and Conveyance from William and Alexander Molson, Executors and Trustees of the Estate late Hon. John Molson, to Wm. H. Kerr and Alex. Molson, dated 27th March 1871 (Plaintiffs' Exhibit No. 13 at Enq.)—*continued.*

RECORD.

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Executors  
and Trustees  
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to Wm. H.  
Kerr and  
Alex.  
Molson,  
dated 27th  
March 1871  
(Plaintiffs'  
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Enq.)—con-  
tinued.

“ Un lot de terre sis et situé en la ville des Trois Rivières de forme  
“ irrégulière contenant environ cent pieds de front plus ou moins sur la rue du  
“ Fleuve joignant d'un côté au sud-ouest à Dame Angelique Brown et de  
“ l'autre côté au nord-est à la rue du Platon (sur laquelle ligne il a environ  
“ soixante pieds de profondeur plus ou moins) et en profondeur à Ezéchiél  
“ Hart Ecuier avec deux maisons une boutique deux étables un hangar et  
“ autres dependances dessus construites.”

5. The one undivided fifth part or portion of that certain debt or sum of  
three thousand three hundred and sixty-three dollars thirty-three cents due to  
the said estate of the said late Honourable John Molson by the estate of the 10  
late John Patton deceased in his lifetime of Montreal aforesaid importer of  
china, glass and earthenware as and for rent of certain property situated in  
Saint James Street in the West Ward in the said city of Montreal together  
with one undivided fifth of all rights and privileges held and possessed by the  
said estate in respect thereof or as security therefor

And it is hereby further agreed that the present transfer and conveyance  
is thus made upon condition to which the said party of the second part agrees  
that he will bear and pay one fifth part of the amount which may hereafter be  
found to be due by the said estate of the said late Honourable John Molson in  
respect of the widening of Little St. James Street and of the proceedings 20  
regarding the same

And the present transfer and conveyance is further made upon the express  
condition as provided for by the eighteenth clause of the said will and as an  
essential condition of the present transfer that all the estate interest and  
property by way of usufruct or otherwise and every part and portion thereof  
which the said Dame Harriet Mary Anne Kerr may in anywise take or receive  
under these presents and all interest or revenues to arise therefrom shall be  
and remain for ever exempt from all liability for her debts present or future  
and shall be absolutely insaisissable for any such debts or for any other cause  
whatever and shall be held and be taken as being to all intents and purposes 30  
*legs d'aliments* by the said late Honourable John Molson made and granted in  
her favour and shall moreover not be susceptible of being by her assigned or  
otherwise alienated for any purpose or cause whatever

The sum of thirty thousand four hundred and eighty-two dollars twelve  
cents being the price of certain property in St. James Street in the said city of  
Montreal as established by a deed of sale thereof from the said parties of the  
first part to the said party of the second part passed before me notary bearing  
even date herewith the price whereof is hereby accepted as cash by the said  
party of the second part as part of the share of the said late George Elsdale  
Molson in the said estate 40

And for the execution of these presents and of every the premises the said  
parties have elected domicile at their ordinary places of abode above mentioned  
where etc.

Done and passed at the city of Montreal in the office of W. A. Phillips the  
said notary under number three thousand one hundred and twenty-one and

signed by the said parties hereto with and in the presence of me notary RECORD.  
 subscribing after these presents have been to them duly read.

(Signed) WILLIAM MOLSON } Executors acting for estate late  
 „ ALEX. MOLSON } Hon. John Molson.  
 „ WILLIAM H. KERR, Tutor.  
 „ WILLIAM H. KERR.  
 „ ALEX. MOLSON.  
 „ W. A. PHILLIPS, N.P.

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 of the  
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 John Molson,  
 to Wm. H.  
 Kerr and  
 Alex.  
 Molson,  
 dated 27th  
 March 1871  
 (Plaintiffs'  
 Exhibit  
 No. 13 at  
 Enq.)—con-  
 tinued.

A true copy of the original hereof which remains of record in my office.  
 10 (Signed) W. A. Phillips, N.P.

Schedule I.

Schedule of Assets, Estate of the late Hon. John Molson on the  
 25th March 1871.

	Molson's Bank Stock	3,200 shares	-	-	160,000	
	Mechanics „ „	100 „	-	-	5,000	
	Champl. and St. L. R. Rd. „	285 „	-	-	11,400	
	Quebec Fire Ins. Co. „	19 „	-	-	2,470	
	Provincial „	30 „	-	-	585	50
	Corporation Bonds	-	-	-	5,000	
20	Mortgage St. Peter Street Property	-	-	-	4,000	
	„ Garden	-	-	-	1,584	81
	5 notes H. Starnes	-	-	-	3,999	15
	Mortgage M. Mill	-	-	-	2,000	
	Matilda Farm	-	-	-	2,000	
	Three Rivers lot	-	-	-	3,500	
	Constitut G. Rogers	-	-	-	1,200	
	St. James Street property sold to S. E. M.	-	-	-	56,800	
	Do. 3 stores	-	-	-	90,575	75
	Cash	-	-	-	50,370	83
30	St. Michel Road Trust 10 shares	-	-	-	760	
					<u>\$401,316</u>	<u>04</u>

There is a deposit in Mechanics' Saving Department  
 bearing 6 per cent. interest to pay legacies of 100%  
 each with interest from date of decease of testator to  
 grandchildren - - - - - 6,524 60  
 Viz. :—John Molson - - - - - 2  
 Estate late G. E. Molson - - - - - 3  
 Capt. G. D. Molson - - - - - 3  
 Alex. Molson - - - - - 2

RECORD.  
 No. 37.  
 Agreement and Conveyance from William and Alexander Molson, Executors and Trustees of the Estate late Hon. John Molson, to Wm. H. Kerr and Alex. Molson, dated 27th March 1871 (Plaintiffs' Exhibit No. 13 at Esq.)—continued.

Schedule Number One referred to in agreement and conveyance from William Molson and Alexander Molson Esquires acting executors and trustees of the estate and effects of the late Honourable John Molson to William H. Kerr and Alexander Molson Esquires executed before W. A. Phillips the undersigned notary and bearing date this twenty-seventh day of March eighteen hundred and seventy-one.

*In test. veritatis.*

(Signed) WILLIAM MOLSON } Acting executors of estate  
 ALEX. MOLSON } late Hon. John Molson.  
 WILLIAM H. KERR.  
 ALEX. MOLSON.  
 W. A. PHILLIPS, N.P.

10

A true copy. (Signed) W. A. Phillips, N.P.

Schedule II.

Schedule of assets of the estate of the late Honourable Jno. Molson proposed to be apportioned to estate late G. E. Molson.

640 Shares	Molsons Bank Stock par value	-	-	\$ 32,000	
20	„ Mechanics	-	-	1,000	
57	„ Champl. and „ St. L. R. Rd. Stock	\$200			
	each $\frac{1}{5}$ th	-	-	2,280	20
4	„ Quebec Fire Ins. Co. Stock	-	-	520	
6	„ Provincial Ins. Co. Stock on which has been paid	-	-	117	10
2	„ St. Michel Road Trust	-	-	152	
	„ Corporation Bond	-	-	1,000	
$\frac{1}{5}$	Mortgage (L. Chaput) for St. Peter St. property	-	-	800	
$\frac{1}{5}$	„ (H. Starnes) for St. Peter garden property	-	-	316	96
$\frac{1}{5}$	(H. Starnes) notes	-	-	799	83
$\frac{1}{5}$	Lot Three Rivers (estimated at \$3,500)	-	-	700	
$\frac{1}{5}$	Constitut. G. Rogers proportion of \$1,200	-	-	240	40
	Scholarship McGill College House No. 1 (Devany & Co.) St. James Street (*)	-	-	30,482	12
	Cash proportion of	-	-	9,855	19
				<u>\$80,263</u>	<u>20</u>

And the  $\frac{1}{5}$ th of the nett amount of the sum of \$3363 $\frac{33}{100}$  remaining unpaid by the estate of the John Patton. The whole subject to the liability of the estate in respect of the Corporation suit respecting the widening of Little St. James Street.

(\*) The above was purchased by the estate of the late G. E. Molson, Esq., at auction on 10th January 1871, for the sum of \$30,482. 12, which sum the estate of the late G. E. Molson, Esq., assumes as cash.



Schedule No. 2 or tabular statement referred to in agreement and conveyance from William Molson and Alexander Molson Esquire acting executors and trustees of the estate and effects of the late Honourable John Molson to William H. Kerr and Alexander Molson Esquires executed before W. A. Phillips the undersigned notary and bearing date this twenty-seventh day of March eighteen hundred and seventy-one.

*In test. veritatis.*

(Signed) WILLIAM MOLSON } Acting executors of estate  
 ,, ALEX. MOLSON } late Hon. John Molson  
 ,, WILLIAM H. KERR.  
 ,, ALEX. MOLSON.  
 ,, W. A. PHILLIPS, N.P.

10

A true copy. (Signed) W. A. Phillips N.P.

(On the back.) No. 3121, 27th March 1871. Agreement and Conveyance from William Molson and Alexander Molson Esqrs. Acting Executors and Trustees of late Honourable John Molson to William H. Kerr and Alexander Molson Esquires.

(Endorsed) Plaintiffs' Exhibit No. 13 at Enquête.  
 Filed 17th February 1892.

(Paraphed) G. H. K., D. P. S. C.

RECORD.

No. 37.  
 Agreement and Conveyance from William and Alexander Molson, Executors and Trustees of the Estate late Hon. John Molson, to Wm. H. Kerr and Alex. Molson, dated 27th March 1871 (Plaintiffs' Exhibit No. 13 at Enq.)—*continued.*

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Schedule No. 49.

On this eleventh day of the month of May in the year of our Lord one thousand eight hundred and seventy-one

Before the undersigned public notary duly commissioned and sworn in and for that part of the Dominion of Canada which heretofore constituted the Province of Lower Canada now the Province of Quebec residing in the city of Montreal in the said Province

Personally came and appeared William Molson of Montreal in the district of Montreal Esquire and Alexander Molson of Montreal aforesaid Esquire in their capacity of sole acting executors and trustees of the estate and effects of the late Honourable John Molson in his lifetime of Montreal in Canada Esquire of the one part

And Samuel Elsdale Molson of Montreal aforesaid Esquire as well individually as in his several capacities of tutor to John Elsdale Molson a minor sole existing issue of his marriage with Dame Agnes Crawford his wife and of curator to the substitution of his share of the residue of the estate of the said late Honourable John Molson created by the will of the said Honourable John Molson of the second part

No. 38.  
 Agreement and Conveyance from Wm. Molson and Alex. Molson, Executors and Trustees of the Estate late Hon. John Molson, to Samuel Elsdale Molson and John Crawford (Phillips, N.P.), dated 11th May 1871 (Plaintiffs' Exhibit No. 14 at Enquête, filed 17th Feb. 1892).

## RECORD.

No. 38.  
 Agreement  
 and Con-  
 veyance from  
 Wm. Molson  
 and Alex.  
 Molson,  
 Executors  
 and Trustees  
 of the Estate  
 late Hon.  
 John Molson,  
 to Samuel  
 Elsdale  
 Molson and  
 John  
 Crawford  
 (Phillips,  
 N.P.), dated  
 11th May  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 14 at  
 Enquête,  
 filed 17th  
 Feb. 1892)—  
*continued.*

And the said Samuel Elsdale Molson and John Crawford of Montreal aforesaid Esquire parties hereto of the third part

Which said parties declared to me notary that whereas the said Honourable John Molson in his last will and testament made and executed at Montreal aforesaid the twentieth day of April in the year of our Lord one thousand eight hundred and sixty before three witnesses, bequeathed and devised his estate and effects in manner and form as in the said last will and testament contained and after making divers special legacies did further bequeath and devise as follows :

“ I give and bequeath to my son Samuel Elsdale Molson during his 10  
 “ natural life the usufruct of my farm at La petite Côte de la Visitation near  
 “ Montreal bounded in front by the Queen’s highway on the north-west side  
 “ by the heirs Flaherty on the south-east side by the heirs Hastings and in  
 “ rear by lands of various proprietors on the St. Michel Road and of a piece  
 “ of land detached from the said farm of about seven acres and a half in  
 “ superficies bounded on both sides by the heirs Flaherty the said farm and  
 “ piece of land being all the land belonging to me at the said La petite Côte  
 “ de la Visitation And at his decease or if he shall die before me then at my  
 “ decease I give and bequeath the further usufruct of the said farm and piece  
 “ of land unto the widow of the said son during the remainder of her natural 20  
 “ life if she shall so long remain his widow but if she shall marry again then  
 “ so long only as she shall remain his widow.”

“ And I further give and bequeath to my said son Samuel Elsdale Molson  
 “ the right by his last will and testament or by a codicil or codicils thereto but  
 “ not otherwise to give and devise the said farm and piece of land or any part  
 “ or parts of the said farm and piece of land (subject by the said usufruct  
 “ thereof in favour of his widow while she shall remain his widow) to his  
 “ lawful issue or to such one or more of his lawful issue and in such proportion  
 “ as she shall see fit or if he have no lawful issue or that such lawful issue  
 “ shall not be living at the time of his decease then unto any such one or more 30  
 “ of my lawful sons grandsons or great-grandsons as he shall choose : in case  
 “ however of my said son Samuel Elsdale Molson dying without having by his  
 “ last will and testament or by a codicil or codicils thereto exercised the right  
 “ hereinbefore given and bequeathed to him then the said farm and piece of  
 “ land (subject to the said usufruct thereof in favour of his said widow while  
 “ she shall remain his widow) shall fall into and become part of the residue of  
 “ my estate.”

“ And as to the residue of my estate real and personal wheresoever the  
 “ same may be and of whatsoever the same may consist of which I may die 40  
 “ possessed or to which I may then be entitled I give devise and bequeath the  
 “ same to my said brother William Molson of the said city of Montreal Esquire  
 “ Mary Ann Elizabeth Molson, my beloved wife and Alexander Molson my  
 “ youngest son now living the survivors and survivor of them and the heirs and  
 “ assigns of the survivor of them upon the several trusts hereinafter declared :  
 “ that is to say upon trust :”

“ Firstly. To hold administer and manage the said residue of my estate  
 “ to the best advantage during the full term of ten years from and after the

“ day of my decease and further if my said wife be living at the expiration of  
 “ that term and shall have acceded to the condition expressed in the sixth  
 “ section of this my will until the expiration of one year from and after her  
 “ decease.”

10 “ Secondly. To sell and convey all such parts of my real estate as are not  
 “ hereinbefore specifically devised and as they shall deem it advantageous to  
 “ my estate to sell and to grant deeds of sale and conveyance of the same to  
 “ receive and grant receipts for the purchase moneys to invest the purchase  
 “ money and all other moneys arising from or accruing to my estate and not  
 “ already invested on good and sufficient security either by way of hypothec  
 “ or mortgage of or on real estate or by the purchase of government stocks or  
 “ stocks of sound incorporated banks so as to produce interest dividends or  
 “ profits to secure the regular payment of the annuity payable to my said wife  
 “ under her said marriage contract and the additional annuity hereinbefore  
 “ bequeathed to her and generally to comply with and fulfil all other the  
 “ requirements of this my will: and,

“ Thirdly. At or so soon as practicable after expiration of the term of the  
 “ said trust, to account for and give up the said residue as the same shall then  
 “ be found to my residuary devisees and legatees hereinafter named.”

20 And whereas the said Samuel Elsdale Molson has since the death of the  
 said Honourable John Molson enjoyed the usufruct of the said farm at La petite  
 Côte de la Visitation and of the said piece of land in conformity with the said  
 will and still continued to enjoy the same.

And whereas the said Dame Mary Ann Elizabeth Molson the wife of the  
 said late Honourable John Molson departed this life on or about the fifth day  
 of May eighteen hundred and sixty-two; whereby the said parties of the first  
 part became the sole surviving and acting trustees and executors of the said  
 last will.

30 And whereas the said parties of the first part have held administered and  
 managed the residue of the said estate to the best advantage from and after the  
 date of the decease of the said Honourable John Molson until the present time  
 and have sold such parts of the real estate of the said Honourable John Molson  
 as were not by the said will specifically devised and as they deemed advan-  
 tageous and have granted deeds of sale and conveyance of the same and have  
 received the purchase money thereof and made such investments thereto and of  
 the proceeds of the said estate as were in the opinion of the said trustees  
 judicious and have paid such annuities special legacies debts expenses of  
 management and other sums of money as were required in the due  
 administration of the said estate and in the conduct and management  
 40 thereof.

And whereas as soon as practicable after the expiration of the term of the  
 said trust mentioned in the said last will and testament the said parties of the  
 first part have accounted for the management of the said trust and the  
 administration thereof and have rendered a full account in detail to the said  
 party of the second part and to all other parties interested therein; of their  
 gestion and management of the said estate and have communicated all vouchers  
 thereof, which account is deposited in the office of me the undersigned notary

RECORD.

No. 38.

Agreement  
 and Con-  
 veyance from  
 Wm. Molson  
 and Alex.  
 Molson,  
 Executors  
 and Trustees  
 of the Estate  
 late Hon.  
 John Molson,  
 to Samuel  
 Elsdale  
 Molson and  
 John  
 Crawford  
 (Phillips,  
 N.P.), dated  
 11th May  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 14 at  
 Enquête,  
 filed 17th  
 Feb. 1892)—  
*continued.*

RECORD. for reference by whom it may concern signed by the said parties thereto, *ne varietur*.

No. 38.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson,  
Executors  
and Trustees  
of the Estate  
late Hon.  
John Molson,  
to Samuel  
Elsdale  
Molson and  
John  
Crawford  
(Phillips,  
N.P.), dated  
11th May,  
1871  
(Plaintiffs'  
Exhibit  
No. 14 at  
Enquête,  
filed 17th  
Feb. 1892)--  
*continued.*

And whereas by the said account it appears as the parties hereto declare the fact is that the mass of the residue of the said estate as it existed on the twenty-fifth day of March last past consisted of the several assets mentioned and detailed in the schedule number one hereto annexed whereof the share of the said Samuel Elsdale Molson said party of the second part consists of monies and securities for money amounting to the sum of eighty thousand two hundred and sixty-three dollars and twenty cents as appears by the tabular statement of the division of the said residue also annexed hereto and numbered 10  
schedule number two which said share the said parties hereto have agreed shall be paid and delivered over to the said parties of the third part for the purposes detailed in the said will.

Now therefore these presents and I the said notary witness that the said parties of the first part have transferred assigned and conveyed and by these presents do transfer assign and convey unto the said parties of the third part the whole of the said several items and assets securities and property detailed in the said Schedule number two hereto annexed The said parties of the third part accepting thereof for themselves and their representatives appointed or to be appointed as hereinafter provided the said several assets securities and 20  
property being hereby so transferred and conveyed to the said parties of the third part upon trust that the same shall be received used and enjoyed in the manner provided by the thirteenth clause of the said will to wit to the end that the revenue thereof shall be enjoyed by the said Samuel Elsdale Molson during his life and that after his death his share shall become and be for ever the property of his lawful issue in the proportion of one share to each daughter and two shares to each son subject however to the right of usufruct thereof to his widow for life or for so long as she shall remain his widow with power however to the said Samuel Elsdale Molson by his last will and testament or by a codicil or codicils thereto but not otherwise to alter the proportions in which 30  
by the foregoing request and devise his share in the said residue is by the said will bequeathed and devised to his lawful issue and even to will and direct that one or more of his said lawful issue shall not be entitled to any part or portion of the said share of the said residue.

And it is hereby further declared that the disposition of the said share of the said residue by these presents in the hands of the said parties of the third part is so made under the power conferred in and by the said last will and testament upon the said parties of the first part namely to provide against the risk of the capital of the share of the said Samuel Elsdale Molson or his widow or children being lost or administered in the hands of any holder thereof under 40  
substitution or as usufructuary thereof.

And the said disposition is assented to by the said Samuel Elsdale Molson and is accepted by the said parties of the third part upon the terms and conditions following that is to say upon trust that they will faithfully diligently and carefully administer the same gratuitously and will pay over the revenues thereof to the said Samuel Elsdale Molson during his life and after his death to his widow during her life unless she shall marry again in which case the

RECORD.

No. 38.  
 Agreement  
 and Con-  
 veyance from  
 Wm. Molson  
 and Alex.  
 Molson,  
 Executors  
 and Trustees  
 of the Estate  
 late Hon.  
 John Molson,  
 to Samuel  
 Elsdale  
 Molson and  
 John  
 Crawford  
 (Phillips,  
 N.P.), dated  
 11th May  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 14 at  
 Enquête,  
 filed 17th  
 Feb. 1892)—  
*continued.*

obligation to pay the revenue to her shall cease and determine and afterwards to convey the capital thereof to the person or persons entitled thereto under and by virtue of the thirteenth clause of the said will and it is hereby further declared and agreed by and between all the said parties hereto that upon the death of the said Samuel Elsdale Molson the said John Crawford shall have the power and it shall be his duty to name and appoint by a notarial instrument duly executed according to the laws of the province of Quebec any fit and proper person previously approved of by the then acting executors or representatives of the said late Honourable John Molson to be trustee jointly with him  
 10 for the parties entitled to the said shares in revenue and capital after the death of the said Samuel Elsdale Molson.

And if the said John Crawford any trustee named as hereinafter provided in his place and stead shall die or be disqualified by insolvency or resign the office of trustee a new trustee shall be appointed in his place and stead by the said Samuel Elsdale Molson and the parties hereto of the first part or the survivors of them or if they be both deceased then by such other person as shall be administering at the time the estate of the said late Honourable John Molson.

And upon the appointment in any of the modes hereinbefore provided of  
 20 a person to act as trustee hereunder such trustee shall be vested with all the powers enjoyed by his predecessors and shall be subject to the same obligations and shall perform the same duties but in the case of the trustees hereby appointed or their successors in office being at any time or for any cause reduced to one such remaining trustee shall not have power to administer the said share or to draw the revenues thereof the power so to do being hereby intended to be exercised always by two trustees and never by one trustee alone.

And it is hereby agreed by and between the said parties hereto that neither  
 30 the said John Crawford as such trustee nor any succeeding trustee shall be liable for any depreciation in the value of any securities selected for reinvestment. And that such trustee shall not in any manner or way whatever be liable personally for any of his acts as trustee, except for intentional wrong and that he shall be liable only for his own acts and deeds though he may have joined in any receipt or receipts for the sake of conformity only nor shall his property be in any way whatever affected or mortgaged any law usage or custom to the contrary notwithstanding.

And if from any cause the number of trustees should be reduced to one and such one should not exercise the power of appointing a co-trustee within three months after the office shall become vacant then the trust hereby created  
 40 shall cease and the then acting executors of the said Honourable John Molson shall resume the possession and administration of the trust hereby created and shall be entitled to take possession or collect and receive all moneys and securities appertaining thereto and all revenues derivable therefrom and to pay the same to the parties entitled thereto.

And the said party of the second part as well individually as in his said capacities hereby declares that he accepts the accounting of the said executors and trustees as sufficient, and that he is content and satisfied with their

**RECORD.**

No. 38.

Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.Molson,  
Executors  
and Trustees  
of the Estate  
late Hon.John Molson,  
to Samuel  
Elsdale  
Molson and  
JohnCrawford  
(Phillips,  
N.P.), dated  
11th May  
1871(Plaintiffs'  
Exhibit  
No. 14 at  
Enquête,  
filed 17th  
Feb. 1892)—  
*continued.*

administration and gestion of the estate and effects of the late Honourable John Molson and with the account so rendered thereof and with the share hereby set apart and appropriated to him and he now hereby fully and completely in his several capacities acquits exonerates and discharges the said parties of the first part of all other or further liability and responsibility to him or to his heirs or assigns in the premises from this day henceforth and for ever.

And it is hereby further agreed that if at any time hereafter and further conveyance or transfer of any of the said securities for money be required the said acting trustees and executors shall execute the same on the request and at the costs and charges of the said party of the second part. 10

And for the purpose of more effectually conveying to the said parties of the third part the several effects rights and properties mentioned in the said Schedule "B" it is hereby further declared and agreed that the said parties of the first part have transferred and conveyed and do hereby transfer and convey to the said parties of the third part accepting thereof

1. The one undivided fifth part and portion of that certain debt or sum of money amounting to the sum of four thousand dollars currency due and payable on the eighteenth day of December now next ensuing to the estate of the said late Honourable John Molson by Leandre Chaput of the said city of Montreal esquire merchant under and by virtue of a certain deed of sale from the said 20 parties of the first part to him the said Leandre Chaput passed before James Smith notary public and bearing date the thirty-first of December eighteen hundred and sixty-six together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothecs appertaining thereto

The one undivided fifth part and portion of that certain debt or sum of money amounting in all to the sum of five thousand five hundred and eighty-three dollars and ninety-six cents current money of Canada to become due and payable to the estate of the said late Honourable John Molson by Henry Starnes of the said city of Montreal esquire as follows—three thousand nine hundred and 30 ninety-nine dollars and fifteen cents as being the amount of his five several promissory notes each for the sum of seven hundred and ninety-nine dollars and eighty-three cents and to fall due respectively on the fourth days of the months of April, May, June, July and August now next ensuing and the balance or remaining sum of one thousand five hundred and eighty-four dollars and eighty-one cents as the amount of the last instalment to become due and payable on the eleventh day of December eighteen hundred and seventy-one under and by virtue of a certain deed of obligation and mortgage from him the said Henry Starnes to the said estate of the said late Honourable John 40 Molson passed before James Smith notary public and bearing date the fourteenth day of December eighteen hundred and sixty-eight together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothèques appertaining thereto

The one undivided fifth part and portion of that certain sum of twelve hundred dollars current money of Canada being the amount of a certain *constitut* payable to the said estate of the said late Honourable John Molson by George Rogers of the said city of Montreal under and by virtue of a certain

deed of sale to him from the said late Honourable John Molson passed before William Ross and his colleague notaries public and bearing date the twentieth day of March eighteen hundred and forty-three together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothèques appertaining thereto

RECORD.

No. 38.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson,  
Executors  
and Trustees  
of the Estate  
late Hon.  
John Molson,  
to Samuel  
Elsdale  
Molson and  
John  
Crawford  
(Phillips,  
N.P.), dated  
11th May  
1871  
(Plaintiffs'  
Exhibit  
No. 14 at  
Enquête,  
filed 17th  
Feb. 1892)  
—continued—

The right of appointment to one scholarship in the University of McGill College now called the Royal Institution for the advancement of learning heretofore held and possessed by the late Honourable John Molson to be hereafter enjoyed and exercised by the said Samuel Elsdale Molson and after  
10 his death by such person or persons as shall hereafter become entitled to the share hereby conveyed to him

The one undivided fifth part or portion of that certain lot of land and premises situated in the town of Three Rivers in the said Province of Quebec and described in the deed of purchase thereof by the said late Honourable John Molson from the sheriff of the district of Three Rivers on the tenth day of April eighteen hundred and forty-two in the French language as follows:—

“Un lot de terre sis et situé en la ville des Trois Rivières de forme  
“irrégulière contenant environ cent pieds de front plus ou moins sur la rue  
“du Fleuve joignant d'un côté au sud-ouest à Dame Angelique Brown et de  
20 “l'autre côté au nord-est à la rue du Platon (sur laquelle ligne il a environ  
“soixante pieds de profondeur plus ou moins) et en profondeur à Ezéchiel  
“Hart Ecuier avec deux maisons une boutique deux étables un hangar et  
“autres dépendances dessus construites.”

The one undivided fifth part or portion of that certain debt or sum of three thousand three hundred and sixty-three dollars and thirty-three cents due to the said estate of the said late Honourable John Molson by the estate of the late John Patton deceased in his lifetime of Montreal aforesaid importer of china, glass and earthenware as and for rent of a certain property situated  
30 in Saint James Street in the west ward of the said city of Montreal together  
with one undivided fifth of all rights and privileges held and possessed by the said estate in respect thereof or as security therefor

And it is hereby further agreed that the present transfer and conveyance is thus made upon condition to which the said party of the second part agrees that he will bear and pay one-fifth part of the amount which may hereafter be found to be due by the said estate of the said late Honourable John Molson in respect of the widening of Little Saint James Street and of the proceedings regarding the same

And the present transfer and conveyance is further made upon the express  
40 condition as provided for by the eighteenth clause of the said last will and as  
an essential condition of the present transfer that all the estate interest and property whether by way of usufruct or otherwise and every part and portion thereof which the said party of the second part or his widow may in anywise take or receive under these presents and all interests and revenues to arise therefrom shall be and remain for ever exempt from all liability for the debts present or future of them or either of them and shall be absolutely insaisissable for any such debts or for any other cause whatever and shall be held and be taken as being to all intents and purposes *legs d'aliments* by the said late

**RECORD.** Honourable John Molson made and granted in favour of them and each of them and shall moreover not be susceptible of being by them or either of them assigned or otherwise alienated for any purpose or cause whatsoever

No. 38.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson,  
Executors  
and Trustees  
of the Estate  
late Hon.  
John Molson,  
to Samuel  
Elsdale  
Molson and  
John  
Crawford  
(Phillips,  
N.P.), dated  
11th May  
1871  
(Plaintiffs'  
Exhibit  
No. 14 at  
Enquête,  
filed 17th  
Feb. 1892)  
—continued.

The sum of thirty thousand nine hundred dollars current money of Canada being part of the price of a certain property in Saint James Street in the West Ward in the said city of Montreal as established by a deed of sale thereof from the said parties of the first part to the said party of the second part passed before the undersigned public notary and bearing even date herewith the said portion of price whereof is hereby accepted as cash by the said party of the second part as part of his share in the said estate

10

It is however understood and agreed that all dividends declared and payable after the twenty-fifth day of March last (1871) on the stocks mentioned and transferred in and by the present agreement and conveyance and the interest and revenue to accrue on the bonds debts and constituted rents hereby transferred from the said twenty-fifth day of March last shall not form part of the trust moneys to be held and administered by the said parties of the third part but shall form part of the revenue thereof belonging to the said Samuel Elsdale Molson and shall be received and enjoyed by him as such.

And the said party of the second part hereby acknowledges to have received from the said parties of the first part all revenues derived from the said share of the said party of the second part since the said twenty-fifth day of March last past

20

And for the execution hereof the said parties have elected domicile at their ordinary places of abode above mentioned where etc. promising, etc. obliging, etc.

Done and passed at the said city of Montreal in the office of William Anderson Phillips the said undersigned notary under the number three thousand two hundred and eighteen

And signed by the said parties hereto with and in the presence of the said notary these presents being first duly read in their presence.

30

(Signed)	WILLIAM MOLSON	} Acting executors of estate of late Hon. John Molson.
"	ALEX. MOLSON	
"	SAML. E. MOLSON,	Tutor.
"	SAML. E. MOLSON.	
"	JNO. CRAWFORD.	
"	W. A. PHILLIPS, N. P.	

A true copy of the original hereof which remains of record in my office.  
(Signed) W. A. Phillips, N. P.



Schedule 1 or A.

RECORD.

Schedule of Assets, Estate of the late Hon. John Molson on 25th March 1871.

	Molsons Bank Stock	3,200 shares	-	-	160,000	
	Mechanics " "	100	"	-	5,000	
	Champl. & St. L.R.R. "	285	"	-	11,400	
	Quebec F. Ins. Company "	19	"	-	2,470	
	Provincial " "	30	"	-	585	50
	Corporation Bond	-	-	-	5,000	
10	Mortgage St. Peter St. property	-	-	-	4,000	
	" Garden	-	-	-	1,584	81
	5 notes H. Starnes	-	-	-	3,999	15
	Mortgage M. Mill	-	-	-	2,000	
	Mathilda Farm	-	-	-	2,000	
	Three Rivers lot	-	-	-	3,500	
	Constitut G. Rogers	-	-	-	1,200	
	St. James Street property sold to S.E.M.	-	-	-	56,900	
	" " 3 stores	-	-	-	90,545	75
	Cash	-	-	-	50,370	83
	St. Michel Road Trust 10 shares	-	-	-	760	
20					<u>\$401,316</u>	<u>04</u>

No. 38.  
 Agreement and Conveyance from Wm. Molson and Alex. Molson, Executors and Trustees of the Estate late Hon. John Molson, to Samuel Elsdale Molson and John Crawford (Phillips, N.P.), dated 11th May 1871 (Plaintiffs' Exhibit No. 14 at Enquête, filed 17th Feb. 1892)  
 —continued.

There is a deposit in Mechanics' Savings Department bearing 6 per cent. interest to pay legacies of 100% each with interest from date of decease of testator to grandchildren

		-	-	-	6,524	60
	Viz. :—John Molson	-	-	-	2	
	Estate late G. E. Molson	-	-	-	3	
	Capt. G. D. Molson	-	-	-	3	
	Alex. Molson	-	-	-	2	

30 Schedule Number One referred to in Deed of Agreement and Conveyance from William Molson and Alexander Molson esquires acting executors and trustees estate late Hon. John Molson to Samuel Elsdale Molson esquire passed before W. A. Phillips notary public and bearing date this eleventh day of May eighteen hundred and seventy-one.

*In test. veritatis.*

(Signed)	WILLIAM MOLSON	} Acting Executors of Estate of late Hon. John Molson.
"	ALEX. MOLSON	
"	S. E. MOLSON, Tutor.	
"	S. E. MOLSON.	
"	JNO. CRAWFORD.	
"	W. A. PHILLIPS, N.P.	

40

A true copy. (Signed) W. A. Phillips, N.P.

## RECORD.

## Schedule II. or B.

## Schedule of Assets of the Estate of the late Hon. Jno. Molson proposed to be apportioned to Samuel E. Molson Esquire.

No. 38.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson,  
Executors  
and Trustees  
of the Estate  
late Hon.  
John Molson,  
to Samuel  
Elsdale  
Molson and  
John  
Crawford  
(Phillips,  
N.P.), dated  
11th May  
1871  
(Plaintiffs'  
Exhibit  
No. 14 at  
Enquête  
filed 17th  
Feb. 1892)  
—continued.

640	Shares	Molsons Bank Stock par value	-	-	\$32,000	
20	„	Mechanics	„	„	1,000	
57	„	Champl. & St. L.R.Rd. Stock \$200 each	$\frac{1}{5}$		2,280	
4	„	Quebec F. Ins. Co.	-	-	520	
6	„	Prov. In. Co. Stock on which has been paid			117	10
2	„	St. Michel Road Trust	-	-	152	
		Corporation Bond	-	-	1,000	10
$\frac{1}{5}$		Mortgage (L. Chaput) for St. P. Street property	-	-	800	
$\frac{1}{5}$		„ (H. Starnes) for Garden property	-	-	316	96
$\frac{1}{5}$		„ „ Notes	-	-	799	83
$\frac{1}{5}$		Lot Three Rivers estimated at \$3,500	-	-	700	
$\frac{1}{5}$		„ Constitut G. Rogers proportion of \$1,200	-	-	240	
1		scholarship McGill College House No. 4 (Thompson and Walton) St. James Street (a)	-	-	30,900	
		Cash, proportion of	-	-	9,437	31
					<u>\$80,263</u>	<u>20</u>

And the  $\frac{1}{5}$ th of the nett amount of the sum of \$3,363 $\frac{33}{100}$  remaining unpaid by the estate of the late John Patton the whole subject to the liability of the estate in respect of the Corporation Suit respecting the widening of Little St. James St. 20

Tabular statement referred to in Deed of Agreement and Conveyance from William Molson and Alexander Molson Esquire acting executors and trustees estate late Hon. John Molson to Samuel Elsdale Molson passed before W. A. Phillips Notary Public and bearing date this eleventh day of May eighteen hundred and seventy-one. 30

*In test. veritatis.*

(Signed)	WILLIAM MOLSON	} Acting executors of estate late Hon. John Molson.
„	ALEX. MOLSON	
„	S. E. MOLSON, Tutor.	
„	S. E. MOLSON.	
„	JNO. CRAWFORD.	
„	W. A. PHILLIPS, N.P.	

(A true copy). (Signed) W. A. Phillips, N.P.

(a) The above house was purchased by S. E. Molson, Esquire, at auction on 10th January 1871 for the sum of \$56,900 of which sum he assumes as cash the sum of \$30,900 the remaining \$26,000 to be on mortgage payable in 3 years from 10th January 1871 with interest at 7 per cent. per annum. Interest payable semi-annually; said mortgage to be given to John Molson Esquire as part of his portion.

(On the back).

No. 3218, 11th May 1871 Agreement and Conveyance from William Molson and Alexander Molson Esquire acting executors and trustees estate late Hon. John Molson to Samuel Elsdale Molson Esquire, and John Crawford Esq.

(Endorsed) Plaintiffs' Exhibit No. 14 at Enquête filed 17th February 1892.

(Paraphed) G. H. K., D. P. S. C.

RECORD.

No. 38.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson, &c.  
—continued.

Schedule No. 50.

10 On this day the twenty-fifth of the month of May in the year of Our Lord one thousand eight hundred and seventy-one

Before the undersigned notary duly commissioned and sworn in and for that part of the dominion of Canada which heretofore constituted the province of Lower Canada now the province of Quebec residing and practising in the city of Montreal in the said province

Personally came and appeared William Molson of Montreal in the district of Montreal Esquire and Alexander Molson of Montreal aforesaid Esquire in their capacity of acting executors and trustees of the estate and effects of the late Honourable John Molson in his lifetime of Montreal in Canada Esquire of the one part

20 And John Molson of the said city of Montreal Esquire as well individually as in his several capacities of tutor to John William Molson, William Alexander Molson and Edith Molson minors sole existing issue of his marriage with Dame Anne Molson his wife and of Curator to the substitution of his share of the residue of the estate of the said late Honourable John Molson created by the will of the said Honourable John Molson party hereto of the second part

Which said parties declared to me notary that whereas the said Honourable John Molson in his last will and testament made and executed at Montreal aforesaid the twentieth day of April in the year of Our Lord one thousand eight hundred and sixty before three witnesses bequeathed and devised his estate and effects in manner and form as in the said will and testament contained

30 And after making divers special legacies did further bequeath and devise as follows, namely :

“ And as to the residue of my estate real and personal wheresoever the  
“ same may be and of whatsoever the same may consist of which I may die  
“ possessed or to which I may then be entitled I give devise and bequeath the  
“ same to my said brother William Molson of the said city of Montreal Esquire  
“ Mary Ann Elizabeth Molson my beloved wife and Alexander Molson my  
“ youngest son now living the survivors and survivor of them and the heirs and

No. 39.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson,  
Executors of  
the Estate  
late Hon.  
John Molson,  
to John  
Molson  
(Phillips,  
N.P.), dated  
25th May  
1871  
(Plaintiffs'  
Exhibit  
No. 15 at  
Enquête,  
filed 17th  
Feb. 1892).

RECORD. " assigns of the survivor of them upon the several trusts hereinafter declared  
 " that is to say upon trust  
 " Firstly. To hold administer and manage the said residue of my estate to  
 " the best advantage during the full term of ten years from and after the day  
 " of my decease and further if my said wife be living at the expiration of that  
 " term and shall have acceded to the condition expressed in the sixth section  
 " of this my will until the expiration of one year from and after her decease.  
 " Secondly. To sell and convey all such parts of my real estate as are not  
 " herein-before specifically devised and as they shall deem it advantageous to my  
 " estate to sell and to grant deeds of sale and conveyance of the same to receive 10  
 " and grant receipts for the purchase moneys and all other moneys arising from  
 " or accruing to my estate and not already invested on good and sufficient  
 " security either by way of hypothèque or mortgage of or on real estate or by  
 " the purchase of Government stocks or stocks of sound incorporated banks so  
 " as to produce interest dividends or profits to secure the regular payment of  
 " the annuity payable to my said wife under her said marriage contract and the  
 " additional annuity herein-before bequeathed to her and generally to comply  
 " with and fulfil all other the requireuents of this my will; and  
 " Thirdly. At or so soon as practicable after the expiration of the term of  
 " the said trust to account for and give up the said residue as the same shall 20  
 " then be found to my residuary devisees and legatees herein-after named."

No. 39.  
 Agreement  
 and Con-  
 veyance from  
 Wm. Molson  
 and Alex.  
 Molson,  
 Executors of  
 the Estate  
 late Hon.  
 John Molson,  
 to John  
 Molson  
 (Phillips,  
 N.P.), dated  
 25th May  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 15 at  
 Enquête,  
 filed 17th  
 Feb. 1892)  
 —continued.

And whereas the said Dame Mary Ann Elizabeth Molson the wife of the  
 said late Honourable John Molson departed this life on or about the fifth day of  
 May eighteen hundred and sixty-two and the said parties of the first part  
 have since acted as surviving and acting trustees and executors of the said last  
 will.

And whereas the said parties of the first part have held administered and  
 managed the residue of the said estate from and after the date of the decease of  
 the said Honourable John Molson until the present time and have sold such  
 parts of the real estate of the said Honourable John Molson as were not by the 30  
 said will specifically devised and as they deemed advantageous and have granted  
 deeds of sale and conveyances of the same and have received the purchase  
 money thereof and made such investments thereof and of the proceeds of the  
 said estate as were in the opinion of the said trustees judicious and have paid  
 such annuities special legacies debts expenses of management and other sums  
 of money as were required in the due administration of the said estate and in  
 the conduct and management thereof.

And whereas the said parties of the first part have accounted for the  
 management of the said trust and the administration thereof and have rendered  
 a full account in detail to the said party of the second part and to all other 40  
 parties interested therein of their gestion and management of the said estate  
 and have communicated all vouchers thereof which account is deposited in the  
 office of me the undersigned notary for reference by whom it may concern  
 signed by the said parties thereto *ne varietur*.

And whereas by the said account it appears as the parties hereto declare  
 the fact is that the mass of the residue of the said estate as it now exists  
 consists of the several assets mentioned and detailed in the schedule number

one hereto annexed. Whereof the share of the said party of the second part consists of moneys and securities for money amounting to the sum of eighty thousand two hundred and sixty-three dollars and twenty cents as appears by the tabular statement of the division of the said residue also annexed hereto and numbered schedule number two which said share the said parties hereto have agreed shall be paid and delivered over to the said party of the second part for the purposes detailed in the said will. Now therefore these presents and I the said notary witnesses that the said parties of the first part have transferred assigned and conveyed and by these presents do transfer assign and  
 10 convey unto the said party of the second part in his said capacities the whole of the said several items and assets securities and property detailed in the said schedule number two hereto annexed the said party of the second part accepting thereof.

The said several assets securities and property being hereby so transferred and conveyed to the said party of the second part to the end that the same shall be received used and enjoyed in the manner provided by the thirtieth clause of the said will to wit to the end that the revenue thereof shall be enjoyed by the said party of the second part during his life and that after his death his share shall become and be for ever the property of his lawful issue in the proportion  
 20 of one share to each daughter and two shares to each son subject to the right of usufruct thereof to his widow for life or for so long as she shall remain his widow with power however to the said party of the second part by his last will and testament or by a codicil or codicils thereto but not otherwise to alter the proportions in which by the foregoing bequest and devise his share in the said residue is by the said will bequeathed and devised to his lawful issue and even to will and direct that one more of his said lawful issue shall not be entitled to any part or portion of the said share of the said residue.

And further upon condition that in default of such issue the same of the said party of the second part hereby conveyed to him in his said several  
 30 capacities shall pass to such of the collateral relations of the said party of the second part as shall or may become entitled thereto under or by virtue of the provisions of the said will.

And the said party of the second part as well individually as in his said capacity hereby declares that he accepts the accounting of the said executors and trustees as sufficient and that he is content and satisfied with their administration and gestion of the estate and effects of the late Honourable John Molson and with the account so rendered thereof and with the share hereby set apart and appropriated to him and he now hereby fully and completely in his said several capacities acquits exonerates and discharges the  
 40 said parties of the first part of all other and further liability and responsibility to him or his heirs or assigns in the premises from this day henceforth and for ever.

And it is hereby further agreed that if at any time hereafter any further conveyance or transfer of any of the said securities for money be required the said acting trustees and executors shall execute the same on the request and at the costs and charges of the said party of the second part.

RECORD.

No. 39.  
 Agreement and Conveyance from Wm. Molson and Alex. Molson, Executors of the Estate late Hon. John Molson, to John Molson, (Phillips, N.P.), dated 25th May 1871  
 (Plaintiffs' Exhibit No. 15 at Enquête, filed 17th Feb. 1892)  
 —continued.

## RECORD.

No. 39.  
 Agreement  
 and Con-  
 veyance from  
 Wm. Molson  
 and Alex.  
 Molson,  
 Executors of  
 the Estate  
 late Hon.  
 John Molson,  
 to John  
 Molson  
 (Phillips,  
 N.P.), dated  
 25th May  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 15 at  
 Enquête,  
 filed 17th  
 Feb. 1892)  
 —continued.

And for the purpose of more effectually conveying to the said party of the second part the several effects rights and properties mentioned in the said schedule "B" it is hereby further declared and agreed that the said parties of the first part have transferred and conveyed and do hereby transfer and convey to the said party of the second part accepting hereof in his said several capacities.

1. The one undivided fifth part and portion of that certain debt or sum of money amounting to the sum of four thousand dollars currency due and payable on the eighteenth day of December now next ensuing to the estate of the said late Honourable John Molson by Léandre Chaput of the said city 10  
 of Montreal Esquire merchant under and by virtue of a certain deed of sale from the said parties of the first part to him the said Léandre Chaput passed before James Smith notary public and bearing date the thirty-first of December eighteen hundred and sixty-six together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothèques appertaining thereto.

2. The one undivided fifth part and portion of that certain debt or sum of money amounting in all to the sum of five thousand five hundred and eighty-three dollars and ninety-six cents current money of Canada to become due and payable to the estate of the late Honourable John Molson by Henry 20  
 Starnes of the said City of Montreal esquire as follows three thousand nine hundred and ninety-nine dollars and fifteen cents as being the amount of the five several promissory notes each for the sum of seven hundred and ninety-nine dollars and eighty-three cents and to fall due respectively on the fourth days of the months of April, May, June, July and August now next ensuing and the balance or remaining sum of one thousand five hundred and eighty-four dollars and eighty-one cents as the amount of the last instalment to become due and payable on the eleventh day of December eighteen hundred and seventy-one under and by virtue of a certain deed of obligation and mortgage from him the said Henry Starnes to the said estate of the said late 30  
 Honourable John Molson passed before James Smith notary public and bearing date the fourteenth day of December eighteen hundred and sixty-eight together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothèques appertaining thereto.

3. The one undivided fifth part and portion of that certain sum of twelve hundred dollars current money of Canada being the amount of a certain constitut payable to the said estate of the said late Honourable John Molson by George Rogers of the said City of Montreal under and by virtue of a certain deed of sale to him from the said late Honourable John Molson passed before 40  
 William Ross and his colleagues notaries public and bearing date the twentieth day of March eighteen hundred and forty-three together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothèques appertaining thereto.

4. The right of appointment to one scholarship in the University of McGill College now called the Royal Institution for the advancement of learning heretofore held and possessed by the late Honourable John Molson

to be hereafter enjoyed and exercised by the said John Molson and after his death by such person or persons as shall hereafter become entitled to the share hereby conveyed to him.

5. The one undivided half of that certain debt in the nature of a mortgage amounting to the sum of four thousand dollars currency created upon the property known as the Mathilda Mill by a deed of mortgage made and executed under seal at the said city of Montreal on the eighteenth day of May eighteen hundred and sixty-seven. And also the one undivided half of that certain farm and premises situated at Matilda in the Province of Ontario in Canada aforesaid the said farm heretofore belonging to the said late Honourable John Molson and to the said William Molson under transfer from the said John Molson.

6. That certain sum of twenty-six thousand dollars currency due and payable to the said estate and succession by Samuel Elsdale Molson under and by virtue of a certain deed of sale to him by the said parties of the first part passed before the undersigned notary public and bearing date the eleventh day of May instant month of certain property in St. James Street in the said city of Montreal in the said deed more particularly described with interest as in the said deed provided and with all the rights privileges and hypothecs to the said parties of the first part appertaining as security for the payment thereof.

7. The one undivided fifth part or portion of that certain lot of land and premises situated in the town of Three Rivers in the said Province of Quebec and described in the deed of purchase thereof by the said late Honourable John Molson from the sheriff of the district of Three Rivers on the tenth day of April one thousand eight hundred and forty-two in the French language as follows:—

“ Un lot de terre sis et situé en la ville des Trois Rivières de forme irrégulière contenant environ cent pieds de front plus ou moins sur la rue du Fleuve joignant d’un côté au sud-ouest à Dame Angelique Brown et de l’autre côté au nord-est à la rue du Platon (sur laquelle ligne il a environ soixante pieds de profondeur plus ou moins) et en profondeur à Ezéchiél Hart Ecuier avec deux maisons une boutique deux étables un hangar et autres dépendances dessus construites.”

8. The one undivided fifth part or portion of that certain debt or sum of three thousand three hundred and sixty-three dollars and thirty-three cents due to the said estate of the said late Honourable John Molson by the estate of the late John Patton deceased in his lifetime of Montreal aforesaid importer of china glass and earthenware as for rent of a certain property situated in St. James Street in the west ward of the said city of Montreal together with one undivided fifth of all rights and privileges held and possessed by the said estate in respect thereof or as security therefor.

And it is hereby agreed further that the present transfer and conveyance is thus made upon conditions to which the said party of the second part agrees that he will bear and pay one-fifth part of the amount which may hereafter be

RECORD.

No. 39.

Agreement and Conveyance from Wm. Molson and Alex. Molson, Executors of the Estate late Hon. John Molson, to John Molson (Phillips, N.P.), dated 25th May 1871 (Plaintiffs' Exhibit No. 15 at Enquête, filed 17th Feb. 1892)  
—continued.

RECORD. found to be due by the said estate of the said late Honourable John Molson in respect of the widening of Little St. James Street and of the proceedings regarding the same.

No. 39.  
Agreement  
and Con-  
veyance from  
Wm. Molson  
and Alex.  
Molson,  
Executors of  
the Estate  
late Hon.  
John Molson,  
to John  
Molson,  
(Phillips,  
N.P.), dated  
25th May  
1871  
(Plaintiffs'  
Exhibit  
No. 15 at  
Enquête,  
filed 17th  
Feb. 1892)  
—continued.

And the said party of the second part hereby further acknowledges to have received from the said parties of the first part the portraits (oil paintings) of the said late Honourable John Molson and of his father and all the plate and plated ware of the said late Honourable John Molson as provided by the said will an inventory of which is hereto annexed all which portraits plate and plated ware shall be held by the said party of the second part as heir-looms to be transmitted in the succession provided for by the eighth clause of the said will. 10

And the said party of the second part further acknowledges to have received from the said parties of the first part in full the annuity granted and bequeathed by the said late Honourable John Molson to the said party of the second part in and by the twelfth clause of the said last will and testament in manner and form and upon the conditions in the said clause contained.

And the present transfer and conveyance is further made upon the express condition as provided for by the eighteenth clause of the said last will and as an essential condition of the present transfer that all the estate interest and property whether by way of usufruct or otherwise and every part and portion thereof which the said party of the second part or his widow may in anywise take or receive under these presents and all interest or revenue to arise therefrom shall be and remain for ever exempt from all liability for the debts present or future of them or either of them and shall be absolutely insaisissable for any such debts or any other cause whatever and shall be held and be taken as being to all intents and purposes *legs d'aliments* by the said late Honourable John Molson made and granted in favour of them and each of them and shall moreover not be susceptible of being by them or either of them assigned or otherwise alienated for any purpose or cause whatsoever. 20

And to these presents came and intervened Dame Anne Molson wife of the said party of the second part separated from her said husband\* by contract of marriage passed before Isaac Jones Gibb and his colleague notaries public on the seventh day of June eighteen hundred and forty-five and by her said husband hereto duly and specially authorised who declared for the consideration aforesaid to have released and discharged from henceforth and for ever as well on her own behalf as on behalf of her children all right and claim to the sum of eight thousand dollars (2,000 $\frac{1}{2}$ .) currency settled upon her and her children by her said contract of marriage with her said husband the said John Molson and doth further release and discharge the hypothéque created as security therefor upon a lot of ground or emplacement described in the said contract of marriage as— 40

\* Sic.  
“ A lot of ground or emplacement situate being and fronting on Great St. James Street in the said city of Montreal bounded as follows: in front by the street last aforesaid in rear by Hortification Lane on one side to the south-west by Olivier Berthelet and on the other side to the north-east by the property of the said John Molson and containing fifty-four feet four inches



“ and one quarter of an inch in front by whatever depth may be found between  
 “ the said streets with two three storey cut stone houses and other buildings  
 “ thereon erected.”

And for the execution of these presents the said parties have elected domicile at their present places of residence above mentioned where, &c.

Done and passed at the said city of Montreal in the office of W. A. Phillips notary public under the number three thousand two hundred and forty-three and signed by the said parties hereto with and in the presence of the said notary hereunto subscribed these presents having been first duly read in their  
 10 presence.

(Signed)	WILLIAM MOLSON	} Acting Executors of estate } late Hon. Jno. Molson.
( „ )	ALEX. MOLSON	
( „ )	JNO. MOLSON.	
( „ )	ANNE MOLSON.	
( „ )	W. A. PHILLIPS, N.P.	

A true copy of the original hereof which remains of Record in my office.

(Signed) W. A. PHILLIPS, N. P.

RECORD.

No. 39.  
 Agreement and Conveyance from Wm Molson and Alex. Molson, Executors of the Estate late Hon. John Molson, to John Molson (Phillips, N.P.), dated 25th May 1871 (Plaintiffs' Exhibit No. 15 at Enquête, filed 17th Feb. 1892)  
 —continued.

Schedule One or A.

Schedule of Assets Estate of the late Hon. John Molson on  
 20 25th March 1871.

	Molsons Bank Stock	3,200 shares	-	-	-	\$160,000	
	Mechanics „ „	100 „	-	-	-	5,000	
	Charnpl. and St. L. R. Rd.	285 „	-	-	-	11,400	
	Quebec Fire Ins. Co.	19 „	-	-	-	2,470	
	Provincial „ „	30 „	-	-	-	585	50
	Corporation Bonds	-	-	-	-	5,000	
	Mortgage St. Peter Street property	-	-	-	-	4,000	
	„ Garden	„	-	-	-	1,584	81
	5 notes H. Starnes	-	-	-	-	3,999	15
30	Mortgage M. Mill	-	-	-	-	2,000	
	Mathilda Farm	-	-	-	-	2,000	
	Three Rivers lot	-	-	-	-	3,500	
	Constitut G. Rogers	-	-	-	-	1,200	
	St. James Street property sold to S. E. M.	-	-	-	-	56,900	
	„ „ 3 stores	-	-	-	-	90,545	75
	Cash	-	-	-	-	50,370	83
	St. Michel Road 10 shares	-	-	-	-	760	
						<u>\$401,316</u>	<u>04</u>

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 Wm. Molson  
 and Alex.  
 Molson,  
 Executors of  
 the Estate  
 late Hon.  
 John Molson,  
 to John  
 Molson,  
 (Phillips,  
 N.P.), dated  
 25th May  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 15 at  
 Enquête,  
 filed 17th  
 Feb. 1892)  
 —continued.

There is a deposit in Mechanic's Savings Department bearing 6 per cent. interest to pay legacies of 100% each with interest from date of decease of testator to grandchildren, viz.

-	-	-	-	6524	60
John Molson	-	-	-	2	
Estate late G. E. Molson	-	-	-	3	
Capt. G. D. Molson	-	-	-	3	
Alex. Molson	-	-	-	2	

Schedule number one referred to in Deed of Agreement and Conveyance from William Molson and Alexander Molson Esquires acting executors and trustees estate late Honourable John Molson to John Molson Esquires passed before W. A. Phillips notary public and bearing date this twenty-fifth day of May one thousand eight hundred and seventy-one.

*In test. veritatis.*

(Signed)	WILLIAM MOLSON	} Acting Executors of estate late Hon. Jno. Molson.
( do. )	ALEX. MOLSON	
( do. )	JNO. MOLSON.	
( do. )	ANNE MOLSON.	
( do. )	W. A. PHILLIPS, N. P.	

(A true copy.)

W. A. PHILLIPS, N. P.

20

Schedule Two or B.

Schedule of Assets of the late Hon. John Molson proposed to be appointed to John Molson Esquire.

20 shares Mechanics Bank Stock par value	-	-	\$1,000	
57 " Ch. St. L. Railroad \$200 each $\frac{1}{5}$	-	-	2,280	
4 " Quebec Fire Ins. Company "	-	-	520	
6 " Provincial Ins. Co. on which has been paid	-	-	117	10
Corporation Bond	-	-	1,000	
$\frac{1}{5}$ Mortgage (L. Chaput) St. P. St. Property	-	-	800	
$\frac{1}{5}$ " (H. Starnes) Garden "	-	-	316	96
$\frac{1}{5}$ " ( " ) Notes "	-	-	799	83
$\frac{1}{2}$ Mortgage Mathilda Mill (Dorana Cameron)	-	-	2,000	
$\frac{1}{2}$ Mathilda Farm	-	-	2,000	
$\frac{1}{5}$ Lot Three Rivers (Estimated at \$3,500)	-	-	700	
Mortgage St. Js. Street property (S. E. Molson) (*)	-	-	26,000	

30

(\*) The above amount is for mortgage from Samuel E. Molson, Esq., to Executors late Hon. John Molson being the balance of purchase money of House (Thompson and Walton) St. James Street purchased by S. E. Molson on 10th January 1871. Mortgage payable in 3 years from 10th January 1871 with interest at 7% half yearly which amount \$26,000 John Molson Esquire assumes as cash.

2 Shares St. Michel Road Trust	-	-	152	
$\frac{1}{3}$ Constitut (G. Rogers) proportions of \$1,200	-	-	240	
1 Scholarship McGill College cash proportion of	-	-	48,737	31
			<u>86,663</u>	<u>20</u>

**RECORD.**  
 No. 39.  
 Agreement and Conveyance from Wm. Molson and Alex. Molson, Executors of the Estate late Hon. John Molson, to John Molson (Phillips, N.P.), dated 25th May 1871 (Plaintiffs' Exhibit No. 15 at Enquête, filed 17th Feb. 1892)  
 —continued.

10 And the  $\frac{1}{3}$  of the nett amount of the sum of \$3,363  $\frac{3}{100}$  remaining unpaid by the estate of the late John Patton  
 The whole subject to the liability of the estate in respect of the Corporation suit respecting the widening of Little St. James Street.

Schedule number two or tabular statement referred to in Deed of Agreement and Conveyance from William Molson and Alexander Molson Esquires acting executors and trustees estate late Honourable John Molson to John Molson Esquire passed before W. A. Phillips notary public and bearing date this twenty-fifth day of May one thousand eight hundred and seventy-one.

*In test. veritatis.*

20 (Signed) WILLIAM MOLSON } Acting executors of estate  
 ( " ) ALEX. MOLSON } late Hon. Jno. Molson.  
 ( " ) JNO. MOLSON.  
 ( " ) ANNE MOLSON.  
 ( " ) W. A. PHILLIPS, N.P.

(A True Copy.) (Signed) W. A. Phillips, N.P.

(On the back.) No. 3,243, 25th May 1871, Agreement and Conveyance from William Molson and Alexander Molson Esquires acting executors and trustees estate late Honourable John Molson to John Molson Esquire.

(Endorsed.) Plaintiffs' Exhibit No. 15 at Enquête.

(Paraphed.) G.H.K., D.P.S.C.

## RECORD.

## Schedule No. 51.

No. 40.  
 Agreement  
 and Con-  
 veyance from  
 William  
 Molson and  
 Alexander  
 Molson,  
 Executors  
 and Trustees  
 late Hon.  
 John Molson,  
 to Alex.  
 Molson  
 (Phillips,  
 N.P.), dated  
 15th June  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 3, filed  
 8th March  
 1890, and  
 Plaintiffs'  
 Exhibit  
 No. 16 at  
 Enquête,  
 filed 17th  
 Feb. 1892).

On this day the fifteenth of the month of June in the year of our Lord one thousand eight hundred and seventy-one

Before the undersigned Public Notary duly commissioned and sworn in and for that part of the Dominion of Canada which heretofore constituted the province of Lower Canada now the province of Quebec residing and practising in the city of Montreal in the said Province

Personally came and appeared William Molson of Montreal in the district of Montreal Esquire and Alexander Molson of Montreal aforesaid Esquire in their capacity of acting executors and trustees of the estate and effects of the late Honourable John Molson in his lifetime of Montreal in Canada Esquire of the one part 10

And the said Alexander Molson Esquire as well individually as in his several capacities of tutor to Florence Ida Anne Molson, Elizabeth Gertrude Elsie Molson, Charles Atkinson Molson, Herbert Sandfield Sutherland Molson, Percy Vaughan Molson, and Ella Girardine Molson, minors sole existing issue of his marriage with Dame Eliza Holmes his wife and curator to the substitution of his share of the residue of the estate of the said late Honourable John Molson created by the will of the said late Honourable John Molson party hereto of the second part 20

Which said parties declared to me notary

That whereas the said Honourable John Molson in his last will and testament made and executed at Montreal aforesaid the twentieth day of April in the year of our Lord one thousand eight hundred and sixty before three witnesses bequeathed and devised his estate and effects in manner and form as in the said last will and testament contained :—

And after making divers special legacies did further bequeath and devise as follows, namely :—

“ And as to the residue of my estate real and personal wheresoever the same may be and of whatsoever the same may consist of which I may die possessed or to which I may then be entitled I give devise and bequeath the same to my said brother William Molson of the said city of Montreal Esquire Mary Ann Elizabeth Molson my beloved wife and Alexander Molson my youngest son now living the survivors and survivor of them and the heirs and assigns of the survivor of them upon the several trusts hereinafter declared that is to say upon trust. 30

“ Firstly. To hold administer and manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease and further if my said wife be living at the expiration of that term and shall have acceded to the condition expressed in the sixth section. of this my will until the expiration of one year from and after her decease.” 40

“ Secondly. To sell and convey all such parts of my real estate as are not hereinbefore specifically devised and as they shall deem it advantageous to my estate to sell and to grant deeds of sale and conveyance of the same to receive and grant receipts for the purchase moneys to invest the purchase monies and all other moneys arising from or accruing to my estate and not

“ already invested on good and sufficient security either by way of hypothéque  
 “ or mortgage of or on real estate or by the purchase of Government stocks  
 “ or stocks of sound incorporated banks so as to produce interest dividends or  
 “ profits to secure the regular payment of the annuity payable to my said wife  
 “ under her said marriage contract and the additional annuity hereinbefore  
 “ bequeathed to her and generally to comply with and fulfil all other the  
 “ requirements of this my will ; and

10 “ Thirdly. At or as soon as practicable after the expiration of the term  
 “ of the said trust to account for and give up the said residue as the same  
 “ shall then be found to my residuary devisees and legatees herein-after  
 “ named.”

And whereas the said Dame Mary Ann Elizabeth Molson the wife of the  
 said late Honourable John Molson departed this life on or about the fifth  
 day of May eighteen hundred and sixty-two and the said parties of the first  
 part have since acted as surviving and acting trustees and executors of the  
 said last will

20 And whereas the said parties of the first part have held administered and  
 managed the residue of the said estate from and after the date of the decease  
 of the said Honourable John Molson until the present time and have sold such  
 parts of the real estate of the said Honourable John Molson as were not by the  
 said will specifically devised and as they deemed advantageous and have granted  
 deeds of sale and conveyances of the same and have received the purchase  
 money thereof and made such investments thereto and of the proceeds of the  
 said estate as were in the opinion of the said trustees judicious and have paid  
 such annuities special legacies debts expenses of management and other sums  
 of money as were required in the due administration of the said estate and in  
 the conduct and management thereof.

30 And whereas as soon as practicable after the expiration of the term of the  
 said trust mentioned in the said last will and testament the said parties of the  
 first part have accounted for the management of the said trust and the adminis-  
 tration thereof and have rendered a full account in detail to the said party of  
 the second part and to all other parties interested therein of their gestion  
 and management of the said estate and have communicated all vouchers  
 thereof which is deposited in the office of me the undersigned notary for  
 reference by whom it may concern signed by the said parties thereto *ne  
 varietur.*

40 And whereas by the said account it appears as the parties hereto declare  
 the fact is that the mass of the residue of the said estate as it existed on the  
 twenty-fifth day of March last past consisted of the several assets mentioned  
 and detailed in the schedule number one hereto annexed whereof the share  
 of the said party of the second part consists of moneys and securities for  
 money amounting to the sum of eighty-six thousand six hundred and sixty-  
 three dollars and twenty cents as appears by the tabular statement of the  
 division of the said residue also annexed hereto and numbered Schedule  
 Number Two which said share the said parties hereto have agreed shall be  
 paid and delivered over to the said party of the second part for the purposes  
 detailed in the said will.

RECORD.

—  
 No. 40.  
 Agreement  
 and Con-  
 veyance from  
 William  
 Molson and  
 Alexander  
 Molson,  
 Executors  
 and Trustees  
 late Hon.  
 John Molson,  
 to Alex.  
 Molson  
 (Phillips,  
 N.P.), dated  
 15th June  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 3, filed  
 8th March  
 1890, and  
 Plaintiffs'  
 Exhibit  
 No. 16 at  
 Enquête,  
 filed 17th  
 Feb. 1892)  
 —continued.

## RECORD.

No. 40.  
 Agreement  
 and Con-  
 veyance from  
 William  
 Molson and  
 Alexander  
 Molson,  
 Executors  
 and Trustees  
 late Hon.  
 John Molson,  
 to Alex.  
 Molson  
 (Phillips,  
 N.P.), dated  
 15th June  
 1871  
 Plaintiffs'  
 Exhibit  
 No. 3, filed  
 8th March  
 1890, and  
 Plaintiffs'  
 Exhibit  
 No. 16 at  
 Enquête  
 filed 17th  
 Feb. 1872)  
 —continued.

Now therefore these presents and I the said notary witness that the said parties of the first part have transferred assigned and conveyed and by these presents do transfer assign and convey unto the said party of the second part the whole of the said several items and assets securities and property detailed in the said schedule number two hereto annexed the said party of the second part accepting thereof for himself and representatives The said several assets securities and property being hereby so transferred and conveyed to the said party of the second part to the end that the same shall be received used and enjoyed in the manner provided by the thirteenth clause of the said will to wit: to the end that the revenue thereof shall be enjoyed by the said party of the second part during his life and that after his death his share shall become and be for ever the property of his lawful issue in the proportion of one share to each daughter and two shares to each son subject however to the right of usufruct thereof to his widow for life or for so long as she shall remain his widow with power however to the said party of the second part by his last will and testament or by a codicil or codicils thereto but not otherwise to alter the proportions in which by the foregoing bequest and devise his share in the said residue is by the said will bequeathed and devised to his lawful issue and even to will and direct that one or more of his said lawful issue shall not be entitled to any part or portion of the said share of the said residue

And further upon condition that in default of such issue the share of the said party of the second part hereby conveyed to him in his said several capacities shall pass to such of the collateral relations of the said party of the second part as shall or may become entitled thereto under or by virtue of the provisions of the said will.

And the said party of the second part as well individually as in his said capacity hereby declares that he accepts the accounting of the said executors and trustees as sufficient and that he is content and satisfied with their administration and gestion of the estate and effects of the late Honourable John Molson and with the account so rendered thereof and with the share hereby set apart and appropriated to him and he now hereby fully and completely in his said several capacities acquits exonerates and discharges the said parties of the first part of all other and further liability and responsibility to him or his heirs or assigns in the premises from this day henceforth and for ever.

And it is hereby further agreed that if at any time hereafter any further conveyance or transfer of any of the said securities for money be required the said acting trustees and executors shall execute the same on the request and at the cost and charges of the said party of the second part.

And for the purpose of more effectually conveying to the said party of the second part the several effects rights and properties mentioned in the said Schedule B, it is hereby further declared and agreed that the said parties of the first part have transferred and conveyed and do hereby transfer and convey to the said party of the second part accepting hereof in his said several capacities

1. The one undivided fifth part and portion of that certain debt or sum of money amounting to the sum of four thousand dollars current money of

Canada due and payable on the eighteenth day of December now next ensuing to the estate of the said late Honourable John Molson by Leandre Chaput of the said city of Montreal Esquire merchant under and by virtue of a certain deed of sale from the said parties of the first part to him the said Leandre Chaput passed before James Smith notary public and bearing date the thirty-first December eighteen hundred and sixty-six together with the one undivided fifth part of all the interest due and accrued thereon and of all the privileges and hypothecs appertaining thereto.

RECORD.

No. 40.

Agreement  
and Con-  
veyance from  
William  
Molson and  
Alexander  
Molson,  
Executors  
and Trustees  
late Hon.  
John Molson,  
to Alex.  
Molson  
(Phillips,  
N.P.), dated  
15th June  
1871  
(Plaintiffs'  
Exhibit  
No. 3, filed  
8th March  
1890), and  
Plaintiffs'  
Exhibit  
No. 16 at  
Enquête,  
filed 17th  
Feb. 1892)

— continued.

2. The one undivided fifth part and portion of that certain debt or sum of  
10 money amounting in all to the sum of five thousand five hundred and eighty-  
three dollars and ninety-six cents current money of Canada to become due and  
payable to the estate of the said late Honourable John Molson by Henry  
Starnes of the said city of Montreal Esquire as follows: three thousand nine  
hundred and ninety-nine dollars and fifteen cents being the amount of his five  
several promissory notes each for the sum of seven hundred and ninety-nine  
dollars and eighty-three cents and to fall due respectively on the fourth days  
of the months of April, May, June, July and August now next ensuing and  
the balance or remaining sum of one thousand five hundred and eighty-four  
20 dollars and eighty-one cents as the amount of the last instalment to become  
due and payable on the eleventh day of December eighteen hundred and  
seventy-one under and by virtue of a certain deed of obligation and mortgage  
from him the said Henry Starnes to the said estate of the said late Honourable  
John Molson passed before James Smith Notary Public and bearing date the  
fourteenth day of December eighteen hundred and sixty-eight together with  
the one undivided fifth part of all the interest due and accrued thereon and of  
all the privileges and hypothèques appertaining thereto.

3. The one undivided fifth part and portion of that certain sum of twelve  
hundred dollars currency of Canada being the amount of a certain constitut  
payable to the said estate of the said late Honourable John Molson by George  
30 Rogers of the said city of Montreal under and by virtue of a certain deed of  
sale to him from the said late Honourable John Molson passed before William  
Ross and his colleague notaries public and bearing date the twentieth day of  
March eighteen hundred and forty-three together with the one undivided fifth  
part of all the interest due and accrued thereon and of all the privileges and  
hypothèques appertaining thereto.

4. The right of appointment to one scholarship in the University of McGill  
College now called the Royal Institution for the Advancement of Learning  
heretofore held and possessed by the said late Honourable John Molson to be  
hereafter enjoyed and exercised by the said Alexander Molson and after his  
40 death by such person or persons as shall hereafter become entitled to the share  
hereby conveyed to him.

5. The one undivided fifth part or portion of that certain lot of land and  
premises situated in the town of Three Rivers in the said Province of Quebec  
and described in the deed of purchase thereof by the said late Honourable John  
Molson from the Sheriff of the District of Three Rivers on the tenth day of  
April one thousand eight hundred and forty-two in the French language as  
follows :

p. 3716.

R

## RECORD.

No. 40.  
Agreement  
and Con-  
veyance from  
William  
Molson and  
Alexander  
Molson,  
Executors  
and Trustees  
late Hon.  
John Molson,  
to Alex.  
Molson  
(Phillips,  
N.P.), dated  
15th June  
1871  
(Plaintiffs'  
Exhibit  
No. 3, filed  
8th March  
1890, and  
Plaintiffs'  
Exhibit  
No. 16 at  
Enquête,  
filed 17th  
Feb. 1892)

—continued.

“ Un lot de terre sis et situé en la ville des Trois Rivières de forme  
“ irrégulière contenant environ cent pieds de front plus ou moins sur la rue  
“ du Fleuve joignant d'un côté au sud-ouest à Dame Angélique Brown et de  
“ l'autre côté au nord-est à la rue du Platon (sur laquelle ligne il a environ  
“ soixante pieds de profondeur plus ou moins) et en profondeur à Ezechiél  
“ Hart écuyer avec deux maisons une boutique établies un hangar et autres  
“ dépendances dessus construites.”

6. The one undivided fifth part or portion of that certain debt or sum of  
three thousand three hundred and sixty-three dollars and thirty-three cents  
due to the said estate of the said late Honourable John Molson by the estate 10  
of the late John Patton deceased in his lifetime of Montreal aforesaid importer  
of china, glass and earthenware as and for rent of certain property situated in  
St. James Street in the West Ward of the said city of Montreal together with  
one undivided fifth of all rights and privileges held and possessed by the said  
estate in respect thereof or as security thereof.

And it is hereby further agreed that the present transfer and conveyance  
is thus made upon condition to which the said party of the second part agrees  
that he will bear and pay one-fifth part of the amount which may hereafter be  
found to be due by the said estate of the said late Honourable John Molson in  
respect of the widening of Little St. James Street and of the proceedings 20  
regarding the same.

And the said party of the second part hereby further acknowledges to have  
received from the said party of the first part in full the annuity granted and  
bequeathed by the said late Honourable John Molson to the said party of the  
second part in and by the twelfth clause of the said last will and testament in  
manner and form and upon the conditions in the said clause contained.

And the present transfer and conveyance is further made upon the  
express condition as provided for by the eighteenth clause of the said will and  
as an essential condition of the present transfer that all the estate interest and  
property whether by way of usufruct or otherwise and every part or portion 30  
thereof which the said party of the second part or his widow may in anywise  
take or receive under these presents and all interest and revenues to arise  
therefrom shall be and remain for ever exempt from all liability for the debts  
present or future of them or either of them and shall be absolutely insaisissable  
for any such debts or for any such causes whatever and shall be held and be  
taken as being to all intents and purposes *legs d'aliments* by the said late  
Honourable John Molson made and granted in favour of them and each of  
them and shall moreover not be susceptible of being by them or either of them  
assigned or otherwise alienated for any purpose or cause whatsoever.

The sum of thirty thousand seven hundred and seventy-nine dollars and 40  
fifty-two cents being the sum received by the said parties of the first part from  
the said party of the second part in his individual capacity as the price of  
certain property in Saint James Street in the said city of Montreal as  
established by a deed of sale thereof from the said parties of the first part to  
the said party of the second part in his individual capacity passed before me,  
notary, bearing even date herewith the price whereof is hereby accepted as



cash by the said party of the second part as part of his share in the said estate. **RECORD.**

And to these presents came and appeared Dame Eliza Anne Holmes wife of the said party of the second part separated from her said husband\* by contract of her marriage passed before William Eaton and his colleague notaries public on the thirty-first day of July eighteen hundred and fifty-five and by her said husband hereto duly and specially authorized who declared for the considerations aforesaid to have released and discharged from henceforth and for ever as well on her own behalf as on behalf of her children all right and claim to the annuity of one hundred pounds currency per annum and the hypothec created as security therefor settled upon her and her children by her said contract of marriage with her said husband the said Alexander Molson.

And for the execution hereof the said parties have elected domicile at their ordinary places of abode above mentioned where, etc.

Done and passed at the city of Montreal in the office of William Anderson Phillips the said undersigned Notary under the number three thousand two hundred and fifty-eight and signed by the said parties hereto with and in the presence of the said notary these presents being first duly read in their presence.

20 (Signed) WILLIAM MOLSON } Acting Executors of estate late  
 ( " ) ALEX. MOLSON } Hon. Jno. Molson.  
 ( " ) ALEX. MOLSON.  
 ( " ) ELIZA A. MOLSON.  
 ( " ) W. A. PHILLIPS, N. P.

No. 40. Agreement and Conveyance from William Molson and Alexander Molson, Executors and Trustees late Hon. John Molson, to Alex. Molson (Phillips, N.P.), dated 15th June 1871 (Plaintiffs' Exhibit No. 3, filed 8th March 1890, and Plaintiffs' Exhibit No. 16 at Enquête, filed 17th Feb. 1892)

—continued.

A true copy of the original hereof which remains of record in my office. (Signed) W. A. Phillips, N. P.

\* *Sic.*

Schedule one or "A."

Schedule of Assets of the late Hon. Jno. Molson, on 25th March 1871.

30	Molsons Bank stock	3,200 shares	-	-	\$160,000	
	Mechanics " "	100 "	-	-	5,000	
	Champlain and St. L. R. Rd.	285 "	-	-	11,400	
	Quebec Fire Ins. Co.	19 "	-	-	2,470	
	Provincial " "	30 "	-	-	585	50
	Corporation Bonds	-	-	-	5,000	
	Mortgage St. Peter Street property	-	-	-	4,000	
	" Garden	"	-	-	1,584	81
	5 notes H. Starnes	-	-	-	3,999	15
	Mortgage M. Mill	-	-	-	3,000	
	Matilda Farm	-	-	-	2,000	
40	Three Rivers lot	-	-	-	3,500	

RECORD.  
 No. 40.  
 Agreement  
 and Con-  
 veyance from  
 William  
 Molson and  
 Alexander  
 Molson,  
 Executors  
 and Trustees  
 late Hon.  
 John Molson,  
 to Alex.  
 Molson  
 (Phillips,  
 N.P.), dated  
 15th June  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 3, filed  
 8th March  
 1890, and  
 Plaintiffs'  
 Exhibit  
 No. 16 at  
 Enquête,  
 filed 17th  
 Feb. 1892)  
 —continued.

Constitut G. Rogers	-	-	-	-	-	1,200	
St. James Street property sold to S. E. M.	-	-	-	-	-	56,900	
"                    "                    stores	-	-	-	-	-	90,545	75
Cash	-	-	-	-	-	50,370	83
St. Michel Road Trust 10 shares	-	-	-	-	-	760	
						<u>\$401,316</u>	<u>04</u>

There is a deposit in Mechanics' Savings department bearing 6 per cent. interest to pay legacies of 100% each with interest from date of decease of testator to grand-children, viz :—

John Molson	2			6,524	60	10
Estate late Geo. Molson	3					
Capt. J. D. Molson	3					
Alex. Molson	2					

Schedule number one referred to in Deed of Agreement and Conveyance from William Molson and Alexander Molson esquires acting executors and trustees estate late Hon. John Molson to Alex. Molson esquire passed before W. A. Phillips notary public and bearing date this fifteenth day of June one thousand eight hundred and seventy-one.

*In test. veritatis.*

(Signed)	WILLIAM MOLSON	} Acting executors of estate late Hon. John Molson.
"	ALEX. MOLSON	
"	ALEX. MOLSON.	
"	ELIZA A. MOLSON.	
"	W. A. PHILLIPS, N.P.	

(A true copy.) (Signed) W. A. Phillips, N. P.

Schedule Two or "B."

Schedule of Assets of Estate late Hon. John Molson proposed to be apportioned to Alex. Molson esq.

20 shares Mechanics Bank stock	-	-	-	\$1,000		
57 " Champlain St. L. R. Rd. \$200 $\frac{1}{5}$ share	-	-	-	2,280		
4 " Quebec F. Ins. Co.	-	-	-	520		
6 " Provincial " " on which has been paid	-	-	-	117	10	
Corporation Bonds	-	-	-	1,000		
$\frac{1}{5}$ Mortgage (L. Chaput) St. Peter St. property	-	-	-	800		
$\frac{1}{5}$ " (H. Starnes) Garden	-	-	-	316	96	
$\frac{1}{5}$ " ( " ) Notes	-	-	-	799	83	

1/5 Lot Three Rivers estimated at \$3,500	-	700	
House (G. Rogers & Co.) St. Jas. Street (*)	-	30,779	52
2 shares St. Michel Road Trust	-	152	
1/5 Constitut. G. Rogers proportion of \$1,200	-	240	
1 Scholarship McGill College cash proportion of	-	47,957	79
		\$86,663	20

RECORD.

No. 40.  
 Agreement  
 and Con-  
 veyance from  
 William  
 Molson and  
 Alexander  
 Molson,  
 Executors  
 and Trustees  
 late Hon.  
 John Molson,  
 to Alex.  
 Molson  
 (Phillips,  
 N.P.), dated  
 15th June  
 1871  
 (Plaintiffs'  
 Exhibit  
 No. 3, filed  
 8th March  
 1890, and  
 Plaintiffs,  
 Exhibit  
 No. 16 at  
 Enquete,  
 filed 17th  
 Feb. 1892)  
 —continued.

And the one-fifth of the nett amount of the sum of \$3,363 <sup>33</sup>/<sub>100</sub> remaining unpaid by the estate of the late John Patton the whole subject to the liability of the estate in respect of the corporation suit representing the widening of Little St. James Street.

10

Schedule number two or tabular statement referred to in Deed of Agreement and Conveyance from William Molson and Alexander Molson esquires acting executors and trustees estate late Honourable John Molson to Alexander Molson esquire passed before W. A Phillips notary public and bearing date this fifteenth day of June eighteen hundred and seventy-one.

*In test. veritatis.*

20

(Signed)	WILLIAM MOLSON	} Acting executors of estate late Hon. Jno. Molson.
( " )	ALEX. MOLSON	
( " )	ALEX. MOLSON.	
( " )	ELIZA A. MOLSON.	
( " )	W. A. PHILLIPS, N.P.	

(A true copy.) W. A. Phillips, N.P.

(On the back.) No. 3,258, 15th June 1871, Agreement and Conveyance from William Molson and Alexander Molson esquires acting executors trustees late Hon. John Molson to Alexander Molson.

(Endorsed) Plaintiffs' Exhibit No. 16 at Enquête.

Filed 17th February 1892.

30

(Paraphed) G. H. K., D. P. S. C.

---

(\*) The above amount is for house purchased by Alex. Molson at auction on the 10th January 1871 for the sum of \$30,779. 52 which sum Alexander Molson now assumes as cash.

## RECORD.

## Schedule No. 53.

No. 41.

Certified  
Copy of Act  
of Tutor-  
ship to the  
Minor  
Children,  
issue of the  
Marriage  
of Alexander  
Molson with  
Dame  
Elizabeth A.  
Holmes,  
dated 1st  
March 1871  
(Defendants'  
Exhibit M 1  
at Enquête).

Be it remembered that on the first day of March one thousand eight hundred and seventy-one personally came and appeared before us the undersigned prothonotary of the Superior Court for Lower Canada in and for the district of Montreal Alexander Molson of the city and district of Montreal banker who by virtue of the fiat upon the petition presented to us this day for the purpose of appointing a tutor and a sub-tutor to Florence Ida Anne aged 14 years Elizabeth Gertrude Elsie aged twelve years Charles Atkinson aged ten years Herbert Sandfield Sutherland aged eight years Percy Vaughan aged six years and Ella Geraldine aged one year minor children issue of his marriage with Dame Elizabeth A. Holmes his wife hath caused to be cited before us a competent number of the relations and friends of said minor children viz: John Molson, Samuel Esdaile Molson, Joseph D. Molson late Captain in Her Majesty's service the first named banker the second an esquire, William H. Kerr esquire advocate, the three first named paternal uncles to the said minors the said William H. Kerr and James Hempsted banker, George Varey broker, William B. Lambe advocate, all of the city of Montreal except the said Joseph D. Molson of Lennoxville in the district of St. Francis and the four last named friends of the said minor children who having heard the said petition read and being duly sworn to give their advice on the premises, unanimously say, that they are of opinion that the said Alexander Molson be appointed tutor to his said minor children for the purpose mentioned in the said petition and the said John Molson sub-tutor, and they have signed—

(Signed)	Js. HEMPSTED.	(Signed)	JAS. MOLSON.
"	G. VAREY.	"	SAM. E. MOLSON.
"	W. B. LAMBE.	"	J. D. MOLSON.
"	WILLIAM H. KERR.		

Whereupon the said advice is by us the said prothonotary ratified and confirmed, and it is ordered in consequence that the said Alexander Molson be and remain tutor to his said minor children for the purpose of representing his said children in the estate and succession of the late Honourable John Molson in his lifetime of the city of Montreal esquire and the said John Molson sub-tutor, which tutor and sub-tutor, being now personally present, have voluntarily accepted of the said charge, promising upon oath faithfully to discharge the trust reposed in them and they have signed.

(Signed)	ALEX. MOLSON.
"	JNO. MOLSON.

HUBERT PAPINEAU AND HONEY, P. S. C.

Certified to be a true copy of the original remaining in the office of the said court.

(Signed) J. E. CHAMPOUX, Deputy P. S. C.

(On the back.) No. . The 1st March 1871 minors Alexander Molson **RECORD.**  
 tutorship (3 copy.)

(Endorsed.) Defendants' Exhibits M 1 at Enquête.

Filed 7th March 1892.

(Paraphed.) G. H. K., Dep. P. S. C.

No. 41.  
 Certified  
 Copy of Act  
 of Tutor-  
 ship to the  
 Minor  
 Children, &c.  
 —continued.

Schedule No. 54.

Be it remembered that on the second day of March one thousand eight hundred and seventy-one

10 Personally came and appeared before the undersigned Prothonotary of the Superior Court for Lower Canada in and for the district of Montreal

Alexander Molson of the city and district of Montreal banker who by virtue of the fiat upon the petition presented to us this day for the purpose of giving their advice upon the appointment of a curator to the substitution created by the will of the late Honourable John Molson in his lifetime of the city and district of Montreal Esquire for the share in the estate and succession of him the said late Honourable John Molson of which said Alexander Molson is the institute said will executed at Montreal on the twentieth April one thousand eight hundred and sixty hath caused to be cited before us a competent number of the relations and friends of said Alexander Molson and his  
 20 substitutes now living namely John Henry R. Molson of Montreal aforesaid sugar refiner, paternal cousin of petitioner John Molson of the same place, banker, brother of petitioner, Egerton Ford of the same place gentleman, James Hempsted of the same place gentleman, Jonathan Wurtele of the same place advocate, Henry Fortescue of the city of Montreal gentleman and the Honourable John J. C. Abbott of the same place Esquire Queen's Counsel the last five being friends of the said petitioner and the family who having heard the said petition read and being duly sworn to give their advice on the premises unanimously say that they are of opinion that the said Alexander Molson be  
 30 appointed curator to the said substitution created as above mentioned and for the purposes aforesaid, and they have signed.

No. 42.  
 Certified  
 Copy of the  
 Act of  
 Appointment  
 of Alexander  
 Molson as  
 Curator to  
 the Substitu-  
 tion created  
 by the  
 Will of the  
 late Hon.  
 John Molson,  
 dated 2nd  
 March 1871  
 (Defendants'  
 Exhibit M 2,  
 filed 7th  
 March 1892).

(Signed) JOHN H. R. MOLSON.  
 " J. WURTELE.  
 " JNO. MOLSON.  
 " HENRY FORTESCUE.  
 " EGERTON FORD.  
 " JS. HEMPSTED.  
 " J. J. C. ABBOTT.

Whereupon the said advice is by us the said Prothonotary ratified and confirmed and it is ordered in consequence that the said Alexander Molson be  
 40 and remain curator to the said substitution for the share in the estate and succession of him the said late Honourable John Molson of which the said Alexander Molson is the Institute.

## RECORD.

No. 42.  
Certified  
Copy of the  
Act of  
Appointment  
of Alexander  
Molson as  
Curator to  
the Substitu-  
tion created  
by the  
Will of the  
late Hon.  
John Molson,  
dated 2nd  
March 1871  
(Defendants'  
Exhibit M 2,  
filed 7th  
March 1892)  
—continued.

Which said curator being now personally present, hath voluntarily accepted of the said charge promising upon oath faithfully to discharge the trust reposed in him and he hath signed.

(Signed) ALEX. MOLSON.

HUBERT PAPINEAU AND HONEY, P.S.C.

Certified to be a true copy of the original remaining deposited in the office of the said Court.

(Signed) J. E. CHAMPOUX, Deputy P.S.C.

(On the back.) The 2nd March 1871. Substitution created by the last will of the late Hon. J. Molson for the share of Alexander Molson Curatorship 10  
3rd copy.

(Endorsed.) Defendant Exhibit M 2 at Enquête.

Filed 7 March 1892.

(Paraphed.) G. H. K., Dep. P. S. C.

No. 43.  
Certified  
Copy of  
Writ and  
Declaration  
and Plea of  
Defendant.  
The Molsons  
Bank, in  
Case No. 949,  
Stewart v.  
Thomas  
*et al.* and  
petition of G.  
W. Simpson  
(Defendants'  
Exhibit M 3,  
filed 7th  
March 1892).

## Schedule No. 55.

Province of Quebec, District of Montreal.

Superior Court of the Province of Quebec.

Victoria by the grace of God, Queen of the United Kingdom of Great Britain and Ireland, Defender of the Faith, Empress of India To any of the bailiffs of our said Superior Court, duly appointed for the district of 20  
greeting :

We command you to summon Francis Wolferstan Thomas of the city and district of Montreal, John Molson of the same place, and the Molsons Bank, a body politic and corporate, having its principal office and place of business in the said city of Montreal, to be and appear before our said Superior Court, in the Court House, in the city and district of Montreal, on the thirteenth day of February next, or the following juridical day to answer the demand of Andrew B. Stewart of Montreal aforesaid in his quality of curator duly appointed to the substitution created by the last will of the late Honourable John Molson in his lifetime of Montreal aforesaid for the share of the said Honourable John Molson's Estate of which Alexander Molson one of the sons of the said 30  
Hon. John Molson is Institute the said Alexander Molson of Montreal aforesaid gentleman in his quality of Institute as aforesaid and Herbert S. S. Molson of Montreal one of the substitutes comprised in the said substitution contained in the hereto annexed declaration.

And have, there and then or before, this writ and your proceedings thereon.

In witness whereof we have caused the seal of our said Superior Court to be hereunto affixed at Montreal this twenty-third day of January in the year of our Lord one thousand eight hundred and ninety.

(L.S.)

(Signed) GEO. H. KERNICK,  
Deputy Prothonotary of the said Court.

(True Copy.) (Signed) Geo. H. Kernick, Deputy Prothonotary of the said Court.

RECORD.  
No. 43.  
Certified  
Copy of  
Writ and  
Declaration  
and Plea of  
Defendant,  
the Molsons  
Bank, in  
Case No.949,  
Stewart v.  
Thomas  
*et al.* and  
Petition of  
Geo. W.  
Simpson  
(Defendants'  
Exhibit M 3,  
filed 7th  
March  
1892)—*con-  
tinued.*

(On the back.) I the undersigned residing in Montreal in the district of Montreal one of the sworn bailiffs of the Superior Court of the province of Quebec duly admitted for the said district do hereby certify under my oath of office that on the twenty-ninth day of January one thousand eight hundred and ninety between the hours of eight o'clock forenoon and three of the clock in the afternoon I did serve the present writ and the declaration thereto annexed on the Defendants F. Wolferstan Thomas, John Molson, and the Molsons Bank, by leaving duly certified copies for each by speaking to and leaving the same with a grown and reasonable person in care of and at the principal place of business of said Molsons Bank in said city of Montreal and by speaking to and leaving true and certified copies of said writ and declaration for said Defendants F. Wolferstan Thomas and John Molson with a grown and reasonable person of each of their families at each of their domiciles in said city of Montreal.

Moreover that the distance from my domicile to the place of such service is two miles and from the Montreal Court House to the domiciles of said Defendants is two miles.

Dated at Montreal this 29th January 1890.

(Signed) SAML. E. MARSON, B.S.C.

(True copy).

Canada. Province of Quebec. District of Montreal.

Superior Court.

30 Andrew B. Stewart, *ès-qual.*, *et al.* - - - Plaintiffs,  
*versus*  
F. Wolferstan Thomas *et al.* - - - Defendants.

Plaintiffs in the annexed writ described complain of the Defendants in said writ also described and declare :

That on or about the twelfth day of April eighteen hundred and seventy-two the said Defendants and Plaintiff Alexander Molson entered into a speculation and venture for the purpose of purchasing and speculating in real estate situated in the city of Montreal.

p. 3716.

S

## RECORD.

No. 43.  
 Certified  
 Copy of  
 Writ and  
 Declaration  
 and Plea of  
 Defendant,  
 the Molsons  
 Bank, in  
 Case No. 949,  
 Stewart v.  
 Thomas  
*et al.* and  
 Petition of  
 Geo. W.  
 Simpson  
 (Defendants'  
 Exhibit M 3,  
 filed 7th  
 March  
 1892)—*con-  
 tinued.*

That on or about the thirteenth day of April eighteen hundred and seventy-two by deed executed before Phillips Notary Public said Defendants purchased from the Honourable Charles Wilson certain real estate situated in St. Bonaventure Street in said city said property being more fully known as part of lot number nine hundred (No. 900) St. Antoine Ward.

That the said sale was made in the individual name of said Alexander Molson as sole purchaser but was really bought and agreed to be bought in the interests of the said F. W. Thomas and John Molson two of the said Defendants jointly and on their joint account the whole as is declared and admitted by the said Defendants in a certain agreement in writing signed by 10 them and dated at Montreal the thirteenth day of April eighteen hundred and seventy-two the said writing being in the following terms:

“Montreal 13th April 1872. This is to certify that F. W. Thomas, “John Molson and Alexander Molson esquires are jointly and severally “interested in the purchase of a certain property situated on St. Bonaventure “Street in this city and fully described in a deed of sale before W. A. Phillips “and colleague Notaries Public and dated at Montreal the 12th day of April “1872 from the Honourable Charles Wilson to Alexander Molson and the “said Alexander Molson’s name is merely used for simplifying the purchase “and he holds the said deed for joint account of said F. W. Thomas, John 20 “Molson and Alexander Molson and the said John Molson has this twelfth “day of April 1872 paid and advanced on account of the purchase money and “for their joint account the sum of \$5,000. 00. This memorandum is “executed in triplicate and duly signed by the said F. W. Thomas, John “Molson and Alexander Molson.

“ (Signed) F. WOLFERSTAN THOMAS.  
 “ ( „ ) JOHN MOLSON.  
 “ ( „ ) ALEXANDER MOLSON.

“In presence of—

“ (Signed) G. VAREY.”

30

That on or about the ninth of May eighteen hundred and seventy-three the said F. W. Thomas, John Molson and Alexander Molson purchased another property from one Brodie Jamieson in St. Bonaventure Street also by deeds before Phillips Notary Public said property being more fully described as lot official number 899 St. Antoine Ward by deed before W. A. Phillips N. P.

That the said deed of sale was made to the said John Molson individually but the said purchase was really made by the said F. W. Thomas, John Molson and Alexander Molson jointly.

That on or about the fourth day of June eighteen hundred and seventy-three the said Defendants purchased from Les Religieuses Sœurs Hospitalières 40 de St. Joseph de l’Hôtel Dieu de Montreal by three deeds of sale before F. J. Durand Notary Public eighteen lots of land or property situated on St. Famille and Manée Streets which said three deeds of sale were also taken in the individual name of the said Alexander Molson but were really for and on account of the said F. W. Thomas, John Molson and Alexander Molson.

That in order to raise and transfer the necessary money for the purposes



of the said purchases of real estate the said Alexander Molson at the special request of the said F. W. Thomas and John Molson made and executed his demand promissory note with interest at seven per cent. to the order of the said John Molson said note bearing date at Montreal on or about the nineteenth day of June eighteen hundred and seventy-three and payable to the order of the said John Molson at the Molsons Bank in Montreal said John Molson being then the Vice-President of the said Bank and the said F. Wolferstan Thomas cashier.

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10 That the said note was in reality a joint note and was made for the joint benefit and interest of the said F. Wolferstan Thomas, John Molson and Alexander Molson and made in their joint interest and was discounted through the instrumentality of the said F. Wolferstan Thomas and John Molson at the Molsons Bank and the whole proceeds paid to John Molson as treasurer and to be employed in the joint interest of the said John Molson, F. W. Thomas and Alexander Molson.

20 That in order to secure the payment of the said eight thousand dollars demand note to the said Molsons Bank and for the benefit and advantage of the said F. W. Thomas, John Molson and Alexander Molson jointly it was agreed that the said Alexander Molson individually should transfer to the said John Molson in trust for the Molsons Bank one hundred and sixty shares of the capital stock of the said Molsons Bank then standing in the name of the said Alexander Molson and the said stock was so transferred by the said Alexander Molson to the said John Molson in trust for the Molsons Bank on or about the date of the said note.

That the said one hundred and sixty shares were to the knowledge of the said Bank at the time the property of the substitution of which the Plaintiff is curator.

30 That the said shares were to the knowledge of the said Bank and its officers transferred for the sole purpose of securing the payment of the said loan of eight thousand dollars (\$8,000.00) advanced by the said Bank and such transfer was therefore illegal null and void and in direct violation of the Banking Act.

That the said substitution was created as follows :

That the Honourable John Molson in his lifetime of the city and district of Montreal died at Montreal on or about the twelfth day of July eighteen hundred and sixty having previously made and executed his last will and testament bearing the date the twentieth day of April eighteen hundred and sixty.

40 That the said will was duly probated in the Superior Court for the district of Montreal on or about the seventeenth day of April eighteen hundred and sixty and was duly registered on the nineteenth day of November eighteen hundred and sixty.

That in and by the said last will the said testator devised and declared as follows : to wit :

That in and by the clause of the said will marked "Tenthly" it is devised and declared :—

"And as to the residue of my estate real and personal wheresoever

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“ the same may be and of whatsoever the same may consist of which I  
 “ may die possessed or to which I may then be possessed or to which  
 “ I may then be entitled I give devise and bequeath the same to my said  
 “ brother William Molson of the said city of Montreal Esquire, Mary Ann  
 “ Elizabeth Molson my beloved wife and Alexander Molson my youngest son  
 “ now living the survivors and survivor of them or the heirs and assigns of  
 “ the survivor of them upon the several trusts hereinafter declared that is to  
 “ say upon trust—Firstly to hold administer and manage the said residue  
 “ of my estate to the best advantage during the full term of ten years from and  
 “ after the day of my decease and further if my said wife be living at the 10  
 “ expiration of that term and shall have acceded to the condition expressed  
 “ in the sixth section of this my will until the expiration of one year from and  
 “ after her decease ; secondly to sell and convey all such parts of my real  
 “ estate as are not hereinbefore specifically devised and as they shall deem it  
 “ advantageous to my estate to sell and to grant deeds of sale and conveyance  
 “ of the same to receive and grant receipts for the purchase monies to invest  
 “ the purchase monies and all other monies arising from or accruing to my  
 “ estate and not already invested on good and sufficient security either by way  
 “ of hypothèques or mortgage of or as real estate or by the purchase of  
 “ Government stocks or stocks of sound incorporated banks so as to produce 20  
 “ interest dividends or profits to secure the regular payment of the annuity  
 “ payable to my said wife under her said marriage contract and the additional  
 “ annuity hereinbefore bequeathed to her and generally to comply with and  
 “ fulfil all other the requirements of this my will ; and thirdly at or as soon as  
 “ practicable after the expiration of the term of the said trust to account  
 “ for and give up the said residue as the same shall then be found to my  
 “ residuary devisees and legacies hereinafter named in all questions touching  
 “ the sale and disposition of any part of my estate or the investment of monies  
 “ arising from my estate or accruing thereto the concurrence of any two of my  
 “ said trustees of whom while living my said brother William Molson shall be 30  
 “ one shall be sufficient.”

That in and by the clause of the said will marked “ Eleventhly ” it is  
 declared and devised :—

“ If the said trustees hereby appointed or any of them or any trustee or  
 “ trustees to be appointed as hereinafter is provided shall die or be desirous  
 “ of being discharged or refuse or become incapable to act then and so often  
 “ the said trustees or trustee (and for this purpose any retiring trustee shall  
 “ be considered a trustee) may appoint any person or persons to be a trustee  
 “ or trustees in the place of the trustee or trustees so dying or desirous to be  
 “ discharged or refusing or becoming incapable to act and upon every such 40  
 “ appointment the said trust premises shall *ipso facto* become vested in the  
 “ new trustee or trustees jointly with the surviving or continuing trustee or  
 “ trustees or solely as the case may require and every such new trustee shall  
 “ have the same powers authorities and discretions as if he had been originally  
 “ appointed a trustee.”

That in and by the clause of the said will marked “ Thirteenthly ” it is  
 devised and declared :—

“ I further give and direct that at the expiration of the term herein-before  
 “ limited for the continuance of the said trusts the said residue of my estate  
 “ real and personal as the same shall subsist shall under and subject to the  
 “ conditions and limitations hereinafter expressed fall to and become and be  
 “ for their respective lives only and in equal shares the property of my said  
 “ five sons or if any of them shall have died before the expiration of the said  
 “ term the share of the one so dying or who shall have died shall become and  
 “ be for ever the property of his lawful issue in the proportion of one share to  
 “ each daughter and two shares to each son subject however to the right of  
 10 “ usufruct thereof on the part of the widow.”

That in and by the clause of the said will marked “ Sixteenthly ” it is devised and declared :—

“ And I further will and direct that as soon as it may be practicable after  
 “ the expiration of the term herein-before limited for the continuation of the  
 “ said trust the said trustees shall apportion and distribute the said residue of  
 “ my estate to and among the parties entitled thereto as herein-before directed  
 “ taking care in such apportionment and distribution to provide (as far as may  
 “ be possible) and in such manner as the said trustees may deem best as well  
 “ against risk of the capital as of any of the shares being lost in the hands of  
 20 “ any holder thereof under substitution or as usufructuary thereof as against  
 “ risk by reason of my said engagement under the marriage contract above  
 “ referred to of my sons John and Alexander and if in making the apportion-  
 “ ment and division of the said residue the said trustees shall deem it  
 “ necessary and advantageous to sell any part of the said residue and in lieu  
 “ thereof to apportion and divide the net proceeds of the sales thereof it  
 “ shall be competent for them so to do anything herein-before to the contrary  
 “ notwithstanding.”

That in the clause of the said will marked “ Eighteenthly ” it is devised and declared :—

30 “ It is further my express will and I hereby specially direct and ordain as  
 “ an essential condition of my bequests as aforesaid in favour of my said five  
 “ sons and of their widows respectively that all estate interests and property  
 “ whether by way of usufruct annuity or otherwise and every part and portion  
 “ thereof which my said sons respectively or their widows respectively shall or  
 “ may in anywise take or receive or be entitled to take or receive under this  
 “ my will and also all interest or revenues or income in anywise to arise  
 “ therefrom shall be and remain for ever exempt from all liability for the  
 “ debts present and future of them or any of them and shall be absolutely  
 “ insaisissable for any such debts or any other cause whatsoever and shall be  
 40 “ held and taken as being to all intents and purposes *legs d'aliments* by  
 “ me hereby made and granted in favour of them and shall be moreover  
 “ insusceptible of being by them any or either of them assigned or otherwise  
 “ aliened for any purposes or cause whatsoever.”

That in and by the clause of the said will marked “ Twenty-secondly ” it is devised and declared :

“ I hereby continue and appoint my said three trustees herein-before named  
 “ and the survivors or survivor of them to be executors or executor of this my

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“ last will and testament and I hereby give and transfer unto them as trustees  
 “ and universal fiduciary legatees and devisees under the same and also as  
 “ executors thereof the seizin and possession of all my estate real and personal  
 “ moveable and immoveable, wheresoever the same may be and of whatsoever  
 “ the same may consist, and my further will is that the powers of my executors  
 “ and executor as such shall be and they are hereby continued beyond the time  
 “ limited by the law of this part of the province of Canada and until all and  
 “ every of the obligations of this my will shall have been accomplished.”

That in and by the clause of the said will marked “ Lastly ” it is devised and  
 declared :

“ And lastly provided always and I hereby direct and authorize my dearly  
 “ beloved wife by deed and instrument in writing to be by her signed sealed  
 “ and delivered in the presence of and attested by three credible witnesses to  
 “ nominate constitute and appoint any other fit person to be a trustee executor  
 “ and universal fiduciary legatee and devisee of this my will in the place and  
 “ stead of my said wife, from and after her decease and when such new trustee  
 “ and executor shall be nominated and appointed as aforesaid all the trust  
 “ estate moneys and premises then subject to the trust and the provisions of this  
 “ my will shall be effectually assigned transferred to and vested in the said  
 “ surviving and continuing and new trustees to be held by them and the  
 “ survivors and survivor of them upon the trusts of this my will in all respects  
 “ as if such new trustee had been originally appointed by this my will and the  
 “ person so to be appointed trustee as aforesaid shall have all the powers and  
 “ authority by this my will vested in my said dearly beloved wife in whose place  
 “ and stead he shall be substituted as aforesaid.”

That the said one hundred and sixty shares standing in the name of the  
 said Alexander Molson individually at the date of the said transfer were the  
 property of the said substitution being a portion of the shares belonging to  
 Alexander Molson as his share in the estate of his father under his said  
 will.

That the said Defendants well knew that the said shares were not the  
 property of the said Alexander Molson individually but were the property of  
 the said substitution and that the said Alexander Molson had no right nor  
 authority to transfer or pledge the said shares as security for his speculations  
 with the said F. W. Thomas and John Molson and the said transfer was wholly  
 unauthorized and illegal to the knowledge of the said F. W. Thomas and John  
 Molson.

That the said John Molson was then tutor to the substitution created by  
 the will of the late Honourable John Molson of the share bequeathed to the  
 said Alexander Molson comprising six hundred and forty (640) shares of the  
 Molsons Bank stock and that the one hundred and sixty shares (160) so  
 transferred were a portion of the same and there was not and could not be any  
 transfer made of the substituted shares to Alexander Molson individually.

That on the twenty-seventh day of September eighteen hundred and  
 seventy-four the said Molsons Bank by a written statement addressed to the  
 said Alexander Molson notified the latter that interest was due on the aforesaid

note then still unpaid and that the Bank had and held the said one hundred and sixty shares as security.

That the said shares have never been transferred to the said substitution and the dividends thereon have been retained illegally by the said John Molson and F. W. Thomas since the thirteenth day of September eighteen hundred and seventy-five.

10 That the said Alexander Molson has fully paid up to the Molsons Bank his proportion of the said debt, viz. the third of the said demand note for eight thousand dollars (\$8,000) with one third of all the interest due on the same up to the seventh day of October eighteen hundred and seventy-five.

20 That by reason of the premises Plaintiffs have a right to have the said transfer of one hundred and sixty shares of the capital stock of the said Bank declared illegal null and void and the said Defendants jointly and severally condemned and adjudged to restore and replace in the power of the said substitution in the name of Alexander Molson as institute under the substitution created under the will of the late Honourable John Molson the said one hundred and sixty shares of the said capital stock of the said Molsons Bank together with all dividends since the thirteenth day of September eighteen hundred and seventy-five and interest on said dividends from the date they become payable or in default thereof to pay to Plaintiffs the value thereof to wit the sum of twenty-nine thousand dollars (\$29,000. 00) being fifteen thousand dollars (\$15,000. 00) the value of said shares and fourteen thousand dollars (\$14,000. 00) the amount of said dividends and interest to be invested for the said substitution in the name of the said Alexander Molson as Institute.

That Plaintiff A. B. Stewart was duly named and appointed curator to the said substitution created by the will of the said late Honourable John Molson of which the said Alexander Molson is institute on the nineteenth day of October last.

30 That the said Plaintiff A. B. Stewart was duly authorized by the Superior Court Montreal to institute an action against the said Defendants for the recovery of the said shares dividends and interests on their value, to wit: on the twentieth day of December eighteen hundred and eighty-nine.

That the said Plaintiff Herbert S. S. Molson is one of the substitutes comprised in the said substitution being a son of the said Alexander Molson and the said Plaintiff Alexander Molson is the said institute.

40 Wherefore Plaintiffs pray that the said Defendants be declared to have no right to the said shares and that the transfer thereof be declared to have been illegally made and that the same be annulled and that the said Defendants jointly and severally be adjudged and condemned to restore to the said substitution and place in the name of the said Alexander Molson as institute and of the said substitution under the will of the said late Honourable John Molson in the books of the said Molsons Bank the said one hundred and sixty shares (160) of the capital stock of the said Bank within a delay to be fixed by the judgment of the said substitution and the Plaintiff A. B. Stewart in his said quality of curator the sum of fourteen thousand (\$14,000) being the amount of the dividends upon the shares since the thirteenth day of September eighteen hundred and seventy-five with interest thereon and in default of their restoring

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the said one hundred and sixty shares that they be jointly and severally condemned and adjudged to pay and satisfy to the said institute Alexander Molson and the said substitution and to the said Plaintiff A. B. Stewart in his said quality the value thereof, to wit: the further sum of fifteen thousand dollars (\$15,000) with interest from date of service of process the whole to be invested in the name of the said A. B. Stewart in his said quality for the said substitution. The whole with costs distracts to the undersigned attorneys.

Montreal, 27th January 1890.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
 Attorneys for Plaintiffs.

10

(True copy) (Signed) Geo. H. Kernick, D. P. S. C.

(Endorsed) Writ and Declaration.

(Filed) 13th February 1890.

(Par<sup>ed</sup>) A. B. L.

(True copy) (Signed) Geo. H. Kernick, D. P. S. C.

Canada. Province of Quebec. District of Montreal.

In the Superior Court.

Andrew B. Stewart, *ès-qual.*, *et al.* - - - Plaintiffs,

*versus*

F. Wolferstan Thomas, *et al.* - - - Defendants. 20

And the said Defendants the Molsons Bank hereby severing in their defence from the other Defendants for plea to the Plaintiffs' action, say:—

That all and every the allegations matters and things in the Plaintiffs' declaration set forth and contained except in so far as the same are herein-after expressly admitted to be true are false and the Defendants expressly deny each and every of them from the words "That on or about the twelfth day of April" on the first page thereof to the words "and the said Plaintiff Alexander Molson is the said Institute" on the seventh page thereof inclusive.

Wherefore the Defendants declaring their option that this cause be tried at Enquête and merits further pray the dismissal of the Plaintiffs' action with 30 costs including costs of exhibits distracts to the undersigned attorneys.

Montreal, May 16th 1890.

(Signed) ABBOTTS; CAMPBELL, and MEREDITH,  
 Attorneys for Defendants The Molsons Bank.

And the said Defendants the Molsons Bank without waiver of the foregoing plea for further plea to the Plaintiffs' action and demand, say:—

That except in so far as the same are herein-after expressly admitted to be true all the allegations of the Plaintiffs declaration are false.

That the alleged institute under the said alleged substitution is still living, and was a consenting party to the disposal and transfer of all and every the shares of the capital stock of the Bank which at the time of his death stood in the name of the late Honourable John Molson or which at any time stood in the name of the executors of the said late Honourable John Molson.

That the said Plaintiffs Stewart and H. S. S. Molson have not at this present time any vested right to or interest in the said shares nor are they entitled to have the said shares invested in their names or to have or receive the said shares or any part of the dividends thereof or any sum or sums in lieu thereof even if the same formed part of the estate and succession of the said late Honourable John Molson which the Defendants deny.

That there are others of the alleged substitution under the said alleged substitution living some of age and some minors who are not parties to the present proceedings either personally or by their tutors.

That the said Plaintiffs Stewart and the said Plaintiff Herbert S. S. Molson have no legal right to have or maintain the present action nor have they or either of them ever been legally authorised to prosecute the same.

Wherefore the Defendants declaring their option that this cause be tried at Enquête and merits further pray the dismissal of the Plaintiffs' action with costs including costs of Exhibits distracts to the undersigned attorneys.

Montreal, 16th May 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants The Molsons Bank.

And the said Defendants The Molsons Bank without waiver of the foregoing plea for further plea to the Plaintiffs' action and demand, say:—

That except in so far as the same may be hereinafter expressly admitted to be true all the allegations of the Plaintiffs' declarations are false.

That the said Alexander Molson was a trustee and executor of and under the last will and testament of the said late Honourable John Molson and was a party both personally and as said trustee and executor to all that was done for the carrying out of the provisions of the said will and to the disposal of all the shares of stock in the said Bank in which the said estate or he the said Alexander Molson were interested and is by law in consequence estopped and precluded from having or maintaining the conclusions of the said action having by his own acts so far as regards the Defendants now pleading disposed of all interest in the said stock and disposed himself thereof and divested himself of all rights of property therein.

That the said Defendants now pleading were not parties to or responsible for any of the said transactions alleged to have taken place between the said Thomas or said John Molson and the said Alexander Molson and are not responsible to said Plaintiff for the said stock to any interest or dividends thereon or for any sum or sums claimed by the said declaration in lieu thereof.

That it does not appear by the said declaration what part of the said stock or shares or interest or dividends thereon if any or the sum or sums claimed in lieu thereof the said Alexander Molson or the said Stewart or the said

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RECORD. H. S. S. Molson claimed to be entitled to and they are not by law entitled to claim the said sum jointly.

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That no stocks or shares in the said Bank in Plaintiffs' declaration referred to were by law or ever became subject to any substitution under the will of the said late Honourable John Molson nor was any substitution created by the said will in favour of the children of the said Alexander Molson which affected any stock or shares in the said Bank.

That no property of the estate of the said late Honourable John Molson or proceeds of property of the said estate subject to any substitution in favour of the children of the said Alexander Molson under the said will was ever invested in the stock of the said Bank nor were the formalities required by law for the investing of property of substitutions ever done and performed so as to subject any stock or shares in the said Bank to any such substitution. 10

That by the last will and testament of the late Honourable John Molson and more especially by the tenth clause thereof the whole of his said estate real and personal with the exception of certain specified legacies was devised and bequeathed to his brother William Molson of the city of Montreal Esquire Mary Ann Elizabeth Molson the wife of the said Honourable John Molson and Alexander Molson one of the Plaintiffs in this cause and the survivor or survivors of them upon the several trusts therein declared and the said trustees were further in and by said will appointed executors thereof and their powers were extended beyond the year and a day by law. 20

That the said Dame Mary Ann Elizabeth Molson did not act as one of the trustees or executors and on the day of departed this life.

That the only shares entered in the books of the said Bank in the names of William Molson and Alexander Molson executors estate late Honourable John Molson were three thousand two hundred.

That as the fact was and as appears by the will of the late Honourable John Molson invoked by Defendants the said executors had full power and authority to sell assign transfer or dispose of the said stock as they should see best in their discretion. 30

That on the fifth day of April in the year of our Lord eighteen hundred and eighty-seven at the office of the said Bank at Montreal the said William Molson and Alexander Molson as executors of the said estate of the said late Honourable John Molson required the said Bank to accept and receive a transfer from them to the said Alexander Molson of six hundred and forty shares of the capital stock of the said Bank subject to the rules and regulations of the said Bank and thereupon to wit: Upon the said last-mentioned day by writing *sous seing privé* under their hands and entered in the transfer book of the said Bank the said executors did thereby then and there assign and transfer unto the said Alexander Molson the said six hundred and forty shares in the capital stock of the said Bank absolutely and unconditionally and the said Alexander Molson then and there accepted the said assignment of the said shares and the said transfer. 40

That the said Alexander Molson by the said will and by virtue of the premises was the true and legal holder and owner and possessor of the said six hundred and forty shares and was not at any time the apparent holder or



owner of any other share or shares of the capital stock of the said Molsons Bank purporting to be or which in fact were part of the estate and succession of the said late Honourable John Molson and Defendants expressly deny that the one hundred and sixty shares in question ever formed part of the said six hundred and forty shares.

That if the said Alexander Molson was as alleged the holder of one hundred and sixty shares of the capital stock of the said Bank and transferred the same to said John Molson as alleged the said shares were transferred to him from some person or persons other than the executors and trustees of the estate and succession of the late Honourable John Molson and he appeared by the books of the said Bank to be the true and legal owner thereof and assigned and transferred the same upon the books of the Bank to the said John Molson for value received and the said Bank were not parties to any understanding or agreement between the said Defendants Thomas and Molson and the said Alexander Molson with respect thereto.

That the said Defendant John Molson or the said Defendant Thomas as officers of the Bank had no power or authority to bind or oblige the Bank in respect of any loan upon the security of the capital stock of the Bank if any was made which the Defendants deny and if any loan was ever made purporting to be upon such security the same was made without the knowledge of the Bank and the shares referred to in Plaintiffs' declaration were never in their control.

That if the said one hundred and sixty shares were ever transferred to the said John Molson in trust for the said Molsons Bank which the Defendants pleading deny the said Defendants were not by law entitled to have any legal or beneficial interest in any shares of their own capital stock and could not benefit by the said alleged trust nor can they by law be held accountable for the proceeds of any stocks so transferred.

That by reason of the premises and by law the Defendants are not indebted to the Plaintiffs in manner and form as by Plaintiffs declaration alleged.

Wherefore the Defendants pray the dismissal of the Plaintiffs' action with costs distrains including costs of exhibits to the undersigned attorneys.

Montreal 16th May 1890.

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants the Molsons Bank.

(Received copy.)

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiffs.

(True copy.) (Signed) Geo. H. Kernick, Deputy P.S.C.

(Endorsed.) Pleas of Defendants the Molsons Bank, filed 20th May 1890.

(Paraphed.) A. B. L.

(True copy.) (Signed) Geo. H. Kernick, Deputy P.S.C.

RECORD.

No. 43.  
Certified  
Copy of  
Writ and  
Declaration  
and Plea of  
Defendant,  
the Molsons  
Bank, in  
Case No. 949,  
Stewart v.  
Thomas  
*et al.* and  
Petition of  
Geo. W.  
Simpson  
(Defendants'  
Exhibit M 3,  
filed 7th  
March  
1892)—*con-*  
*tinued.*

**RECORD.**

No. 43.  
 Certified  
 Copy of  
 Writ and  
 Declaration  
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 Defendant,  
 the Molsons  
 Bank, in  
 Case No.949,  
 Stewart v.  
 Thomas  
*et al.* and  
 Petition of  
 Geo. W.  
 Simpson  
 (Defendants'  
 Exhibit M 3,  
 filed 7th  
 March  
 1892)—con-  
 tinued.

Province of Quebec. District of Montreal.

Superior Court.

A. B. Stewart *et al.* - - - - - Plaintiffs,  
*versus*  
 The Molsons Bank - - - - - Defendants,  
 and  
 G. W. Simpson - - - - - Petitioner.

To the said Superior Court or to any of the Honourable Judges or Prothonotary thereof.

The petition of G. W. Simpson of the city and district of Montreal 10  
 broker

Respectfully represents

That on or about the nineteenth day of December last past (1890) A. B. Stewart one of the Plaintiffs in this cause in his quality of curator to the substitution created by the last will and testament of the late Honourable John Molson departed this life.

That on or about the twenty-second day of December last past your petitioner was by a judgment of this Court on the advice of a family council duly appointed curator to said substitution in the place and stead of said late A. B. Stewart and authorised to take up the instance in this cause as appears 20  
 by a copy of order herewith produced.

Wherefore your petitioner prays that he be allowed to take up the instance in this cause in his quality of curator to said substitution and continue the said cause to judgment in the place and stead of the said late A. B. Stewart the whole with costs distracts to the undersigned.

Montreal 8th January 1891.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
 Attorneys for Petitioner.

Messrs. Abbotts, Campbell, and Meredith.  
 Attorneys for Defendants Thomas and Molsons Bank.

30

Gentlemen,

Take notice of the foregoing petition and that the same will be presented to this Honourable Court at the Court House Montreal on the twelfth day of January instant at half past ten of the clock in the forenoon or so soon as counsel can be heard.

Montreal 8th January 1891.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
 Attorneys for Petitioner.

(Received copy.)

(Signed) ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants Thomas and Molsons Bank.

(True copy.)

(Endorsed.) Petition and Notice.

(Filed.) 12th January 1891.

(Paraphed.) A. E. D., D. P. S. C.

Awarded.

(Paraphed.) M. M., J. C. S.

10

(True copy.)

Defendants' Exhibit M 3.

(Filed) 7th March 1892.

(Paraphed.) G. H. K., D. P. S. C.

RECORD.

No. 43.  
Certified  
Copy of  
Writ and  
Declaration  
and Plea of  
Defendant,  
the Molsons  
Bank, in  
Case No. 949,  
Stewart v.  
Thomas  
*et al.* and  
Petition of  
Geo. W.  
Simpson  
(Defendants'  
Exhibit M 3,  
filed 7th  
March  
1892)—*con-  
tinued.*

Schedule No. 56.

No. 373.

Canada, Province of Quebec, District of Montreal.

In the Superior Court for Lower Canada.

(Appeal Side.)

Present: The Hon. Mr. Justice Taschereau.

20

A. B. Stewart, *es-qual.*, *et al.* - - - Plaintiffs,

*versus*

The Molsons Bank - - - Defendants.

and

Geo. W. Simpson, *es-qual.*, *et al.* - Plaintiff *par reprise d'instance.*

Deposition of John Low.

30 On this twenty-sixth day of January, in the year of our Lord, one thousand eight hundred and ninety-two, personally came and appeared John Low, city of Montreal, assistant secretary Stock Exchange, aged        years, and witness produced on the part of the Plaintiffs who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Low, what is your occupation?

A. I am a stock broker, and assistant secretary of the Montreal Stock Exchange.

No. 44.  
Deposition  
of John  
Low, filed  
2nd Feb.  
1892.

## RECORD.

No. 44.  
Deposition  
of John  
Low, filed  
2nd Feb.  
1892—*con-  
tinued.*

Q. Will you look at the document now shown you, marked Plaintiffs' exhibit number one, and state whether this gives a statement of the actual value of the shares of the Molsons Bank for the dates covered by the document itself?

A. Yes, it is a correct extract from the stock ledger of the board.

Q. And verified by yourself as secretary of the Stock Exchange?

A. Yes, sir.

Counsel for the Defendant being called upon to cross-examine the witness declares that he has no questions to ask, and his deposition is declared closed.

10

And further deponent saith not.

(Signed) CHAS. DE B. MACDONALD,  
Stenographer.

[By consent the headings and endorsements to depositions are considered unnecessary to be printed.]

## Schedule 57.

No. 45.  
Deposition  
of W. J.  
Fenwick,  
filed 2nd  
Feb. 1892.

## Deposition of William J. Fenwick.

On this twenty-sixth day of January, in the year of our Lord, one thousand eight hundred and ninety-two, personally came and appeared William J. Fenwick, city of Montreal stock broker, aged \_\_\_\_\_ years, and witness produced on the part of Plaintiffs who being duly sworn, deposeseth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Fenwick, what is your occupation?

A. I am a stock broker.

Q. Of the city of Montreal?

A. Yes.

Q. Will you look at the statement, Plaintiffs' exhibit number two, filed at enquête, now shown you, prepared by you, and state whether it gives a correct statement of the dividend due upon the Molsons Bank stocks within the dates mentioned in it?

A. Yes, it does.

Q. You have verified that?

A. Yes, I have verified that already.

Q. And this is a correct statement of the dividends from eighteen hundred and seventy-one (1871), to eighteen hundred and ninety-two (1892)?

A. Yes.

Counsel for the Defendants being called upon to cross-examine witness, declares that he has no questions to ask, and this deposition is declared closed.

And further deponent saith not.

(Signed) CHAS. DE B. MACDONALD,  
Stenographer.

## Schedule No. 58.

## Deposition of James Elliott.

RECORD.

No. 46.  
Deposition  
of James  
Elliott, filed  
2nd Feb.  
1892.

On this twenty-sixth day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared James Elliott, of the city of Montreal, local manager of Molsons Bank, aged      years, and witness produced on the part of the Plaintiffs, who, being duly sworn, depose and saith:—I am not related, allied or of kin to any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Elliott, what is your occupation?

10 A. I am local manager of the Molsons Bank.

Q. How long have you been in the employ of the Bank?

A. About thirty-two years.

Q. Since eighteen hundred and fifty-nine?

A. Yes.

Q. You have a knowledge of the transactions of the Bank, and are in charge of a certain department in the Bank?

A. Yes.

Q. Have you with you the transfer books of the Bank?

A. Yes, sir, I have it.

20 Q. I would like you, if possible, to turn to the transfer into the name of the executors of the three thousand two hundred shares appertaining to the estate of the late Honourable John Molson?

A. The transfer was made by journal entry.

Q. Please state the date of it?

30 A. The transfer was made by journal entry dated the eleventh of May eighteen hundred and sixty-six. The entry reads thus:—"Declaration number twelve, dated eleventh of May eighteen hundred and sixty-six, Honourable John Molson (that is the name in which the stock stood), debtor to executors, viz: William Molson and Alexander Molson for transmission, three thousand two hundred shares of stock of fifty dollars each, one hundred and sixty thousand dollars."

Q. That declaration referred to in that entry, what do you understand it to be?

(Counsel for Defendant objects to any evidence as to the understanding of witness concerning the declaration. Question withdrawn.)

Q. Have you any knowledge of the declaration, or what knowledge have you of the declaration referred to, and where is it to be found?

40 A. The declaration is I believe, now in the hands of Messrs. Abbotts Campbell and Meredith, or of Mr. Trenholme. It is a regular notarial document.

Q. I would like you to produce it?

A. I think we handed it to Mr. Trenholme.

Q. Have you the date of it?

A. Yes, it is dated eleventh of May, eighteen hundred and sixty-six.

Q. Do you remember the name of the notary before whom it was passed?

A. I believe Phillips was the notary.

RECORD.  
 —  
 No. 46.  
 Deposition  
 of James  
 Elliott, filed  
 2nd Feb.  
 1892—con-  
 tinued.

Q. It was made about six years after the death of the Honourable John Molson ?

A. Yes, about that time.

Q. Now, Mr. Elliott, have you any knowledge why the shares remained so long as that, and were still standing in the name of the Honourable John Molson ?

A. No, sir.

Q. After the shares were registered, for how long did they remain in the hands of the executors ? Up to what time ?

A. Up to the year eighteen hundred and seventy-one. 10

Q. Up to about the fifth of April ?

A. Yes, up to the fifth of April, eighteen hundred and seventy-one.

Q. Have you any entry in reference to these shares between these intervals ?

A. I don't think so.

Q. Will you look at these transfers now shown you, turn to the fifth of April, eighteen hundred and sixty-six, according as they are entered in your book, and give us the first entry in your book of the transfer of any portion of such shares ?

(Counsel for Defendant objects to evidence as to any of the transfers other than those set forth in the declaration. Objection reserved.) 20

A. Yes, I will begin with the margin. The entry in the margin is as follows :—"Transfer number six hundred and sixty-two, number of shares, six hundred and forty, amount, thirty-two thousand dollars, Executors of Estate of the late Honourable John Molson to W. H. Kerr, Tutor, and Alex. Molson, Trustee. Instalment book folio , Stock Register folio twenty-seven—" three hundred and eighty-one." That is in the margin.

Q. Now, give us the entry in the body of the transfer ?

A. The body of the transfer reads as follows :—"For value received from W. H. Kerr, Tutor, and Alex. Molson, Trustee, both of Montreal, we do hereby assign and transfer unto the said W. H. Kerr, Tutor, and Alex. Molson, Trustee, six hundred and forty shares, on each of which have been paid fifty dollars currency, amounting to the sum of thirty-two thousand two hundred dollars, in the capital stock of the Molsons Bank, subject to the rules and regulations of the said Bank. 30

"Witness our hands at the said Bank, on this fifth day of April, in the year of our Lord, one thousand eight hundred and seventy-one."

Then it is signed, W. H. Kerr and Alex. Molson, and in brackets on the right hand side, the words are written, "Executors of the Estate of the Honourable John Molson." 40

Q. Then, comes the acceptance ?

A. Yes, the acceptance reads as follows :—"We do hereby accept the foregoing assignment of six hundred and forty shares of capital stock in the Molsons Bank, assigned to us as above mentioned, at the Bank, on this fifth day of April, in the year of our Lord, one thousand eight hundred

“and seventy-one, and it is signed, W. H. Kerr, Tutor, and Alex. Molson, “Trustee.”

The said transfer is herewith filed as Plaintiffs’ exhibit number three at enquête.

Q. Now, take the next one filed as Plaintiffs’ exhibit number four at enquête ?

A. The margin of the transfer reads as follows :—“Transfer number six hundred and sixty-eight, number of shares six hundred and forty, amount thirty-two thousand dollars, Executors of the estate of the late Honourable John Molson to Alex. Molson, Instalment book folio Stock Register book twenty-seven two hundred and eighty-two.”

Then, the body of the transfer reads as follows :—“For value received from Alex. Molson of Montreal we do hereby assign and transfer unto the said Alex. Molson six hundred and forty shares on each of which are paid fifty dollars currency, amounting to the sum of thirty-two thousand dollars in the capital stock of the Molsons Bank, subject to the rules and regulations of the said Bank.

“Witness our hands at the said Bank on this fifth day of April in the year of our Lord one thousand eight hundred and seventy-one.” Then, it is signed Alex. Molson and William Molson, Executors of the Estate of the late Honourable John Molson in brackets on the right hand side, and the acceptance of the transfer reads as follows :—“I do hereby accept the foregoing transfer of six hundred and forty shares of capital stock in the Molsons Bank assigned to me as above mentioned at the Bank on this fifth day of April in the year of our Lord one thousand eight hundred and seventy-one, signed Alex. Molson.”

Q. These are the shares in question in this case ?

A. Yes, Sir.

Q. Now, what is the next transfer, Plaintiffs’ exhibit number five filed at enquête ?

A. The next one is a transfer to J. D. Molson.

Q. It is a transfer in the same terms at the same date to John D. Molson, one of the sons of the late Honourable John Molson ?

A. Yes, as tutor.

Q. In precisely the same words ?

A. Yes, in precisely the same words.

Q. And exhibit number five of Plaintiff, filed at enquête, is a certified extract from the books of the Bank ?

A. Yes.

Q. What is the next transfer filed as Plaintiffs’ exhibit number six ?

A. The next one is a transfer to John Molson.

Q. At the same date, there was a transfer of the same number of shares to John Molson ?

A. Yes.

Q. Who is John Molson ?

A. John Molson was the eldest son of the late Honourable John Molson.

Q. Was he an officer in the Bank at that time ?

## RECORD.

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No. 46.  
Deposition  
of James  
Elliott, filed  
2nd Feb.  
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tinued.

A. He was in the Bank, that is he had his office there, but at the time I believe he had no position in the Bank; he had been accountant and I had been appointed accountant in his place a few months previously.

Q. He was an officer of the Bank, at that time?

A. I don't think so, not at that time, but he had been up to very near that time, and was still there.

Q. The transfer to John Molson was of the same number of shares upon the same date and to him personally?

A. Yes, to him personally.

Q. And was there a transfer made to Samuel E. Molson?

10

A. Yes, there was a transfer to Samuel E. Molson and John Crawford, which reads thus in the margin: "Transfer number two hundred and twelve, number of shares six hundred and forty, amount thirty-two thousand dollars, William Molson and Alex. Molson, executors of the estate of the late Honourable John Molson to Samuel E. Molson tutor and trustee, and John Crawford trustee."

And the body of the transfer reads as follows:—"For value received from Samuel E. Molson, tutor and trustee, and John Crawford, trustee, of Montreal, we do hereby assign and transfer unto the said Samuel E. Molson tutor and trustee, and John Crawford trustee; six hundred and forty shares 20 in the capital stock of the Molson's Bank, on each of which shares are paid fifty dollars currency, amounting to thirty-two thousand dollars in the capital stock of the Molsons Bank, subject to the rules and regulations of the said Bank.

"Witness our hands at the Bank on this eleventh day of May in the year of our Lord one thousand eight hundred and seventy-one," and then it is signed William Molson and Alex. Molson, with brackets on the right hand side, acting executors of the estate of the late Honourable John Molson.

The acceptance reads as follows:—"We hereby accept the foregoing six hundred and forty shares of the stock of the Molsons Bank assigned to us 30 as above mentioned at the Bank on this eleventh day of May in the year of our Lord one thousand eight hundred and seventy-one, signed Samuel E. Molson, tutor and trustee, and John Crawford, trustee."

Q. It is also certified by the Bank?

A. Yes.

Q. Whom did Samuel E. Molson and John Crawford represent as tutor and trustees, which of the children?

(Counsel for Defendant objects to this question inasmuch as the best evidence of the quality of the parties to whom these transfers were made would appear by the documents appointing them. Objection reserved by the 40 Court.)

A. The last transfer represents Mr. Samuel E. Molson's share.

Q. Look at this statement, and say if it is a summary prepared from the books of the Bank in regard to the thirty-two thousand dollars or a copy thereof, the said statement being marked as Plaintiff's exhibit number eight filed at enquête?



**A.** Yes, this was made at the Bank. It is a copy of the stock account of the executors of the estate of the late Honourable John Molson. **RECORD.**

**Q.** And it is correct?

**A.** Yes, Sir.

**Q.** Now, Mr. Elliott, to whom did you pay the dividends before the transfer of eighteen hundred and sixty-six, upon that stock, to the executors—the stock was put in their name by that declaration in eighteen hundred and sixty-six—with whom had you been dealing before that? **No. 46.**  
**Deposition**  
**of James**  
**Elliott, filed**  
**2nd Feb.**  
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**tinued.**

(Counsel for Defendant objects to this question as irrelevant, the dividends before eighteen hundred and sixty-six not being in question in this case. Objection reserved by the Court.)

**A.** I am not certain, I don't remember.

**Q.** Had the Bank to your knowledge a copy of the will in their possession from about the time of the death of the Honourable John Molson?

**A.** I don't know when the copy of the will was first placed in the Bank, but we have a copy of it.

**Q.** And you have the copy still in your possession?

**A.** Yes.

**Q.** Have you it with you?

**A.** Yes.

**Q.** Can you state how long it had been in the Bank approximately, to your knowledge?

**A.** No, Sir, I cannot say.

**Q.** You have spoken of these transfers or of this transmission of shares into the name of the executors; is it not always the case, or is it not usually so when such a declaration is made that it is accompanied with some title or with some vouchers under which the transfer takes place?

**A.** Yes.

**Q.** Had you any knowledge, at the time that declaration was made transferring the thirty-two hundred shares of stock of the Bank that the declaration was accompanied in the usual way with documents or vouchers?

**A.** I cannot say because I did not make the entry. I had personally nothing to do with it.

**Q.** Would such a declaration have any effect unless there was something to support it and upon which to base it, in order to make it effective?

**A.** Not in the ordinary business of a customer of the Bank, because it would be my duty, or the duty of the officer attending to the matter to see that a copy of the will and certificate of death and other documents were given us.

**Q.** When such a declaration is made and supported by documents have you any record in the Bank as to what the documents consist of and what they are?

**A.** No. There is no record kept of the contents of the documents, the documents are all laid together and attached to the declaration.

**Q.** Have you looked for the declaration and documents connected with it?

**A.** I don't know if we have any documents attached to it, but that will.

RECORD.  
 No. 46.  
 Deposition  
 of James  
 Elliott, filed  
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 tinued.

Q. Is the will attached to it?

A. The declaration was handed around.

Q. But had you any doubt that the will or some such document was lodged in the Bank, showing that the stock had to be transferred into the name of the executors?

A. I cannot say, because this was outside of our regular business, it was a matter concerning the president of the Bank, and the documents connected with it were in the hand of the president of the Bank and other officials.

Q. Will you state to the Court who were the officials of the Bank at the 10 time of the transfer in eighteen hundred and sixty-six, and before that, and up to when they held office, who was the president?

A. The president was Mr. William Molson.

Q. Do you know when Mr. William Molson entered upon his duty as president of the Bank?

A. He was president when I went into the Bank in eighteen hundred and fifty-nine.

Q. How long did he remain there as president?

A. Till his death in eighteen hundred and seventy-five, I think.

Q. Now, were there any other members of the family officers of the Bank, 20 and please state what office was held by them?

A. Mr. John Molson was accountant.

Q. For how long was he accountant of the Bank?

A. He was accountant when I went there, and remained so till towards the end of the year eighteen hundred and seventy.

Q. Was there any other member of the family an officer of the Bank?

A. The president of the Bank at that time was a member of the family, and also the vice-president.

Q. Who was the vice-president?

A. I cannot remember who he was in eighteen hundred and sixty-six. 30

Q. Well, since then?

A. Mr. John Henry Molson was vice-president for a good many years, and Mr. John Molson was vice-president some time after eighteen hundred and seventy-one, long after Mr. John Molson was made vice-president, and he was president for a time.

Q. Who was vice-president when you went to the Bank in eighteen hundred and fifty-nine?

A. The Honourable John Molson was vice-president till his death in eighteen hundred and sixty.

Q. In the transfer that you have mentioned here, and in the transmission 40 of shares, and the other business of the Bank, are these matters usually submitted to Counsel?

A. Yes, sir.

Q. Who was the legal adviser of the Bank at that time, and for how long?

A. The Honourable Mr. John J. C. Abbott was legal adviser of the Bank at the time I went into the Bank in eighteen hundred and fifty-nine, the

Honourable Mr. Laflamme had been legal adviser of the Bank for several years, and then Mr. Abbott became adviser of the Bank about the year eighteen hundred and sixty-six.

Q. And how long did he remain as legal adviser of the Bank ?

A. He is the legal adviser of the Bank still, he or his firm.

Q. Do you know whether or not, these various transfers and transactions relating to the estate were done under the supervision of the Honourable Mr. Abbott as Counsel for the Bank ?

A. I believe so.

10 Q. Have you any doubt about it ?

A. I have no doubt about it.

Q. Do you know whether or not, at the same time, he acted as legal adviser of the executors ?

A. I cannot say, I have no personal knowledge of it, I have heard it but I cannot state it as a fact, as I have no personal knowledge of it.

Q. Will you look at the statement now filed as Plaintiff's exhibit number nine, and say if it was prepared from the books of the Bank, and also state whether from that date the functions of the executors as regards your Bank subsisted ?

20 A. Yes, this account was made by the Bank, and it is a statement of the transactions in connection with the account of the estate of the Honourable John Molson, and William and Alex. Molson, executors.

Q. It was prepared by the Bank and certified as correct by the officials of the Bank ?

A. Yes.

Q. Did that terminate the account as far as you know of the executors with the Bank, this last statement Plaintiff's exhibit number nine ?

A. I believe so, it seems closed.

30 Q. It is the last account rendered and the last business done between the executors and the Bank ?

A. Yes.

Q. Now, Mr. Elliott, I would like you when you go to the Bank, to look for the declaration and any documents in reference to the declaration which you mentioned transferring the thirty-two hundred shares and for any documents which may have been connected with it, and produce them ?

A. Yes.

Q. Have you made a statement of the dividends that have accrued upon these shares ?

A. Yes.

40 Q. Have you a statement that you can produce ?

A. Yes, I was subpoenaed to bring it, and I filed the same marked Plaintiff's exhibit number ten, the said statement showing the dividends accrued upon the said shares, and the statement is up to date.

Q. Did you prepare also a statement of the value of the shares during these periods ?

A. No, I cannot do that, we do not keep any record of that.

RECORD.

No. 46.

Deposition  
of James  
Elliott, filed  
2nd Feb.  
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of James  
Elliott, filed  
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tinued.

Q. I would like now to know when the shares were not transferred, whether you could tell by reference to the books of the Bank to whom the dividends were paid?

A. I cannot tell when the dividends were paid.

Q. I presume the dividends were paid until they were transferred in April, to the executors?

A. Yes, they were paid to the executors.

Q. Now, I want to know whether you have any doubt that the will was in the possession of the Bank and was lodged with the declaration in order to make the transfer of the whole of the shares? 10

A. I cannot remember about the will, you see the president of the Bank himself being an executor might have kept the copy of the will himself and not lodged it in my hands.

Q. Were you then as an officer of the Bank not familiar with these proceedings?

(Counsel for Defendant objects to this evidence as irrelevant, and to the question as suggestive. Question withdrawn.)

Q. By whose orders were these entries made of these transfers, did you make them yourself in your own handwriting?

A. They are in my handwriting except a few words. 20

Q. Who gave you the orders to make these entries—I refer to the transfers?

A. I cannot say exactly.

*Cross-examined.*—Q. At the time of the transmission of the stock from the name of the Honourable John Molson to the names of the executors in trust, you had not charge of that part of the business of the Bank?

A. Mr. John Molson the former accountant was there still and that declaration or journal entry is in his handwriting, he made it himself.

Q. You don't know that there was a will attached to that declaration?

A. I don't know. 30

Q. And you don't know as a fact that Mr. Abbott was consulted about it?

A. No, I simply infer that.

Q. In cases where your legal advisers are consulted about transfers of stock, you get a written opinion?

A. Yes, usually.

Q. And you have no written opinion from the Honourable Mr. Abbott about this transfer?

A. I cannot say if there is one or not.

Q. You have no personal knowledge at all of Mr. Abbott's relations to the executors of the Honourable John Molson's estate? 40

A. Not personally.

Q. Nor any personal knowledge of any advice given by him at any time upon any subject to them?

A. I would not be apt to see it.

Q. And you don't know of any ?

A. No, I don't know of any.

Q. You had, at the time the six hundred and forty shares were transferred by the executors of the Honourable John Molson to Mr. Alex. Molson, no knowledge of any of the claims or under what conditions they were so transferring the shares ?

A. Not at that time.

Q. And the only knowledge you have is what you have acquired since by hearsay ?

10 A. Yes.

Q. The transfer is made upon the transfer book of the Bank in the form provided by the statute, that is the transfer of the six hundred and forty shares to Mr. Alex. Molson ?

A. Yes.

*Re-examined.*—Q. When you speak of a written opinion being usually given in relation to these various transfers, at the time of which you speak, was it usual for the Bank to take legal advice, was it not done verbally as regards these different transactions ? Or can you say if, at the time, you got the written opinion ?

20 A. I cannot say.

And further the deponent saith not.

(Signed)

CHAS. DE B. MACDONALD,  
Stenographer.

And on this twenty-seventh day of the month of January eighteen hundred and ninety-two, re-appeared the said witness, James Elliot, who is examined by Mr. Robertson, Q. C. as follows :—

Q. You were subpoenaed to bring this morning the transfer book of the Bank and the receipts for the dividends from the death or about the time of the death of the late Honourable John Molson up to eighteen hundred and sixty-six.

30 Can you produce these documents ?

A. Yes, I have the dividend book here, in which are entered all the dividends paid to the shareholders of the Bank, and I find that the dividends on the three thousand two hundred shares were paid on receipt of William Molson and Alexander Molson to them as executors.

The dividends begin on the first of October eighteen hundred and sixty, and were paid regularly up to the time of the declaration. They were all paid on the receipt of these two executors, and you asked me to bring the dividend cheques themselves. There they are.

Q. Can you leave them with the Court ?

40 A. Yes.

Q. And the payments were continued in the same way up to the date of the transfer in April eighteen hundred and seventy-one ?

A. Yes.

RECORD.

No. 46.  
Deposition  
of James  
Elliott, filed  
2nd Feb.  
1892—con-  
tinued.

Q. All the dividends were regularly paid from October eighteen hundred and sixty?

A. Yes, I have the cheques present in Court, but I prefer not to leave them. I now exhibit them and they are endorsed William Molson and Alexander Molson, executors of the estate of the late Honourable John Molson and made to the order of the executors of the estate of the late Honourable John Molson.

Q. You have also the book here?

A. Yes.

Q. And it is receipted in the same manner?

A. Yes, the book is receipted in the same manner.

Q. By the same parties?

A. Yes, by the same parties. I was asked also to furnish a copy of the declaration of transmission, we could not find it, but I find that on the twenty-third October eighteen hundred and eighty-nine, the Bank has the receipt of Mr. Norman T. Trenholme, Q. C. for the transmission of stock to the executors, Mr. Trenholme being one of the acting Counsel in this case for the Defendant.

Counsel for Defendant being called upon to cross-examine the witness, declares that he has no questions to ask, and this deposition is declared 20 closed.

And further the deponent saith not.

(Signed) CHAS. DE B. MACDONALD,  
Stenographer.

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Schedule No. 59.

Deposition of F. Wolferstan Thomas.

No. 47.  
Deposition  
of F. W.  
Thomas,  
filed 2nd  
Feb. 1892.

On this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared F. Wolferstan Thomas, of the city of Montreal, general manager Molsons Bank, aged years, and witness produced on the part of the Plaintiff who 30 being duly sworn deposeth and saith:—I am not related, allied or of kin to, any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Thomas what is your occupation?

A. I am general manager of the Molsons Bank.

Q. Since what time have you been acting as manager of the Molsons' Bank?

A. Since June eighteen hundred and seventy.

Q. Who was then the legal adviser of the Bank?

A. Mr. Abbott.

Q. That is Honourable J. J. C. Abbott?

A. Yes.

Q. In the matter of the transmission of shares what is the practice in your Bank? Do you require a notarial statement or declaration supported by documents establishing the title of the shares which are transmitted?

40

A. Do you wish me to speak from my personal knowledge ?

Q. Yes.

A. Well I have never taken any part in the management of stock at all, so I know nothing about it.

Q. Who does ?

A. Mr. Elliott, the manager, and I think prior to him Mr. John Molson.

Q. Do you know the change of the title of shares to be made without your cognizance ?

A. Yes, I have no cognizance of that at all.

10 Q. None whatever ?

A. None whatever.

Q. Are you not aware that by the rules of the Bank, every transmission of shares must be submitted to and passed by the solicitor or counsel of the Bank ?

A. I am not personally aware of that at all.

Q. So you are totally ignorant of how these transmissions of shares are made ?

A. I am, because it does not devolve upon me to attend to them.

Q. And is it the same with respect to the transfer of shares ?

20 A. It is the same in regard to stock altogether, I take no part in it, and I know nothing about it.

Q. Who was in eighteen hundred and seventy and in eighteen hundred and seventy-one responsible or held responsible for transmission or transfer of shares by the Bank ?

A. Well, I do not think I can answer that, there are other officials in the Bank who can answer that question.

Q. Who was the president of the Bank since eighteen hundred and seventy and for several years after ?

30 A. Since eighteen hundred and seventy and for some years after, the late Mr. William Molson was president of the Bank.

Q. In eighteen hundred and sixty-six Mr. Molson was also president of the Bank ?

A. I was not here in eighteen hundred and sixty-six.

Q. Who was the legal adviser of your institution in eighteen hundred and sixty-six ?

A. I do not know, I was not here then, I did not belong to it at that time.

Q. Since eighteen hundred and seventy Mr. Abbott has been the legal adviser of the Bank ?

A. Mr. Abbott or his firm, I really don't know which.

40 Q. He or his firm ?

A. Yes, he or his firm.

Counsel for Defendant being called upon to cross-examine the witness declares that he has no questions to ask and the examination of this witness is declared closed.

And further deponent saith not.

(Signed) CHAS. DE B. MACDONALD,  
Stenographer.

## RECORD.

No. 48.  
Deposition  
of William  
Robb, filed  
2nd Feb.  
1892.

## Schedule No. 60.

## Deposition of William Robb.

On this twenty-seventh day of January, in the year of our Lord, one thousand eight hundred and ninety-two, personally came and appeared, William Robb city of Montreal city treasurer, aged        years, and witness produced on the part of the Plaintiffs who being duly sworn deposed and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Robb what is your occupation?

A. I am city treasurer of the city of Montreal. 10

Q. You are acquainted with Mr. Alexander Molson, one of the parties in this case?

A. Yes.

Q. Is it to your knowledge that Mr. Molson is insolvent and since when?

A. As to the date I cannot say, but if inability to meet one's obligations constitutes insolvency, Mr. Alexander Molson has been insolvent for the last ten or twelve years I should say, at least.

Q. Can you state, whether he has no means at his disposal, private means, to carry on his household expenses and other living expenses except by 20 borrowing?

A. I have been so informed.

Q. Have you not advanced him sums of money occasionally?

(Counsel for Defendant objected to this question as irrelevant. Objection reserved by the Court.)

A. Not personally.

Q. Is he indebted to the city in any large amount for taxes?

A. He is.

Q. And has been for several years?

A. Yes. 30

*Cross-examined.*—Q. Are you not aware that Mr. Molson is the owner of property on St. James Street in the city of Montreal?

A. I am aware that property on St. James Street is assessed in his name.

Q. And it is on that property that he owes taxes?

A. Yes.

Q. What is the rental of that property?

A. I am not aware of that.

Q. You are not aware of that?

A. No.

Q. Do you know where his property is? 40

A. It is on St. James Street.

Q. On St. James Street near Bleury Street?

A. Between Bleury Street and Victoria Square.

Q. Have you any idea what property of that class and in that locality can be rented for?

A. If my memory serves me, I heard that it was rented for between one thousand and twelve hundred dollars.



Q. And you say that he is largely indebted for taxes, is that the only property or real estate that he owns in Montreal?

A. He is also indebted for property assessed in his name on Sherbrooke Street where he resides.

Q. What is the value of that property on Sherbrooke Street?

A. As I did not know that I would be put that question I did not look it up, but I should estimate it to be about one hundred and fifty dollars a year.

Q. What capital would that represent?

A. It would represent between twelve and fourteen thousand dollars.

10 Q. And what is the annual assessment of the St. James property?

A. It is about four hundred and thirty dollars.

Q. What capital would that represent?

A. It would represent I suppose thirty thousand dollars.

*Re-examined.*—Q. You don't know in whose name these properties are that you have spoken of—the property on Sherbrooke Street—is it not Mrs. Molson's property, or whose is it, do you know?

A. My impression is that it is assessed in the name of Mrs. Molson.

Q. And the property on St. James Street, in whose name is it assessed?

A. I thought you alluded to it.

20 Q. No; I ask you in whose name it is assessed?

A. I am not personally aware whether it is in his name or in the name of Mrs. Molson, that is the property on St. James Street; but I am almost certain that it is assessed in the name of Mrs. Molson.

Q. Is the property on St. James Street individual property, or is it property substituted?

A. I cannot say.

*Re-cross-examined.*—Q. How is it that you stated that Mr. Alexander Molson is indebted for taxes on the Sherbrooke property if it is not assessed in his name—do you wish to correct your statement if there is any reason to correct it? Is it assessed in the name of the proprietor?

A. Yes, the assessment is in the name of the proprietor, and inasmuch as Mr. Molson was the only person we knew in the matter and the party we looked to for payment of the taxes, and the party to whom I have many times written pressing for payment of the taxes, I naturally considered it was his property.

Q. You were writing to the husband for payment of the debt of his wife?

A. I believe so in the case of the Sherbrooke Street property.

Q. And as far as the St. James Street property is concerned, you are not positive?

40 A. No, I am not positive.

And further the deponent saith not.

(Sgd.)

CHAS. DE B. MACDONALD,  
Stenographer.

RECORD.

No. 48.  
Deposition  
of William  
Robb, filed  
2nd Feb.  
1892—con-  
tinued.

RECORD.

Schedule No. 61.

No. 49.  
Deposition  
of G. W.  
Simpson,  
filed 2nd  
Feb. 1892.

## Deposition of George W. Simpson.

On this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared George W. Simpson, city of Montreal, stockbroker, aged        years, and witness produced on the part of the Plaintiffs, who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Simpson, what is your occupation?

A. I am a stockbroker.

Q. You are acquainted with Mr. Alexander Molson, one of the parties in this cause?

A. I am.

Q. And you made an examination, Mr. Simpson, in relation to the value of the shares of the Molsons Bank, and also the amount of dividends accrued since April eighteen hundred and seventy-one up to date?

A. Yes, I have seen these Exhibits numbers one and two of the Plaintiff, and signed the documents, which were made and signed in my office.

Q. You examined them thoroughly?

A. Yes.

Q. Have you any knowledge of the present circumstances of Mr. Molson, or what have been his circumstances since eighteen hundred and seventy-five, and eighteen hundred and eighty-seven, at the time of the difficulty with the Bank, and state what your means of knowing the same are?

A. I have known Mr. Molson for some time, and in regard to the position of his affairs, I would state that on one special occasion I lent money to Mr. Ford, the stock broker, amounting to fifteen hundred dollars as a second mortgage on a house, the mortgage was made to Mr. Molson, or due to him, Mr. Ford being himself unable to pay either principal or interest on that loan. I had some reason to believe that Mr. Molson was responsible for the debt upon the second mortgage, and I made enquiry, but found that he was not worth the powder and shot.

Q. And since then, has he not been notoriously insolvent?

(Counsel for the Defendant objects to this question as being leading. Objection reserved by the Court.)

A. Yes, notoriously so.

Q. Will you state, since that period, what in your opinion have been his circumstances, and your means of knowing them?

A. My experience is that I loaned Mr. Molson five hundred dollars when he was in great difficulty and distress; but I insisted on his getting a satisfactory endorsement to his note; the note ran on for three years but it was ultimately paid.

Q. You have seen the statement of his circumstances that showed exactly the position of his standing in the former litigation?

(Counsel for the Defendant objects to this question. Question withdrawn.)

Q. Has he not been insolvent since eighteen hundred and seventy-five, to the best of your knowledge?

(Counsel for Defendant objects to this question as leading. Objection reserved by the Court.)

A. I have paid no particular attention to the statement of his financial condition which I have seen, because I happened to know pretty well that he was insolvent.

Q. And you believe he is now insolvent?

A. Yes, I believe he is now insolvent.

10 *Cross-examined.*—Q. Are you aware that he has any income?

A. I do not know.

Q. Or any property?

A. I do not know, I think not.

Q. Or Mrs. Molson?

A. I do not know anything about her circumstances.

Q. In fact, you know nothing about his assets?

A. No.

Q. And nothing about his liabilities?

A. No, I know nothing about his liabilities.

20 Q. Then it is just a supposition of yours that he is insolvent?

A. No, I made enquiry when he owed me money, and I found it was useless to sue him for it.

Q. Did you find out among other things that he was in receipt of rent of the property on St. James Street?

A. No, it was before he had come into possession of that.

Q. You do know then that he does receive the rent of that property?

A. I believe he does.

Q. You know it?

A. No, I don't.

30 Q. Did you never hear him say it?

A. No, I never heard him say a word about it.

Q. You know that he receives the dividends of stock besides?

A. I am not Mr. Molson's man of business and I know nothing about it.

Q. How can you swear that he is insolvent?

A. I swear that I made enquiry and found that he could not pay me the money he owed me when I applied to him, and that it was not worth while suing him for it.

Q. And that is your only reason for saying that he is insolvent?

40 A. It is a matter of general notoriety, all Mr. Molson's dealings and his connection with the Mechanics Bank, and the condition in which he was left after the failure of the Bank are matters well known in St. François Xavier Street. We hear a good deal there.

Q. And I suppose you hear a good deal there that is not true?

A. Sometimes.

RECORD.

No. 49.

Deposition

of G. W.

Simpson,

filed 2nd

Feb. 1892—

continued.

## RECORD.

No. 49.  
Deposition  
of G. W.  
Simpson,  
filed 2nd  
Feb. 1892—  
*continued.*

Q. Do you consider him insolvent when he gets an annual rental on property that is coming to him?

A. My opinion is of no value.

And further deponent saith not.

(Sgd.) CHAS. DE B. MACDONALD,  
Stenographer.

## Schedule No. 62.

No. 50.  
Deposition  
of Alexander  
Molson, filed  
2nd Feb.  
1892.

## Deposition of Alexander Molson.

On this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared 10 Alexander Molson, of the city of Montreal, gentleman, aged      years, and witness produced on the part of the Plaintiffs, who, being duly sworn, deposeth and saith:—

Q. Mr. Molson, you are one of the Plaintiffs in this case?

A. Yes, and one of the substitutes.

(Mr. Campbell, of Counsel for the Defendant, objects to the examination of this witness on the ground that it is not competent for him to give evidence on behalf of Plaintiffs in this case. Objection maintained by the Court.)

And further deponent saith not.

(Sgd.) CHAS. DE B. MACDONALD, 20  
Stenographer.

## Schedule No. 63.

No. 51.  
Deposition  
of E. W. H.  
Phillips,  
filed 2nd  
Feb. 1892.

## Deposition of Edward W. H. Phillips.

On this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared Edward W. H. Phillips, of the city of Montreal, notary public, aged      years, and witness produced on the part of the Plaintiff, who, being duly sworn, deposeth and saith:—I am not related, allied or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Phillips, you are a son of W. A. Phillips, notary public? 30

A. Yes.

Q. And you are also a notary public yourself?

A. Yes.

Q. And you are in charge and in custody of his repertoire?

A. Yes.

Q. You are aware that certain deeds are in that repertoire passed between the executors of the estate of the late Honourable John Molson and certain other parties?

A. Yes.

Q. Now, have you among these deeds any *acte de dépôt* of account rendered by the executors?

A. I have an *acte de dépôt* here, made by Samuel E. Molson and Joseph D. Molson, and W. H. Kerr in his quality of tutor. RECORD.

Q. Will you produce that *acte de dépôt*?

(Counsel for the Defendant objects to the production of this *acte de dépôt* on the ground that it does not appear that the *acte de dépôt* or its contents are relevant to the question in issue in this case, and also on the ground that it is a notarial document which was not produced, nor was a copy thereof produced with the return of the action. Objection reserved by the Court.)

(Counsel for Plaintiff produces a copy of the said *acte de dépôt* as exhibit  
10 number eleven.)

Q. You have searched through Mr. W. A. Phillips' repertory and can you state whether there are any other *actes de dépôt* of account, purporting to be accounts of the executors of the estate of the late Honourable John Molson?

A. No. I have searched through it for the years before and after that date, and I did not find anything else. I have not searched for these late years.

Q. Now, in addition to the agreement of conveyance or discharge from the executors of the late Honourable John Molson to Alexander Molson, dated fifteenth of June eighteen hundred and seventy-one, are there any other similar conveyances in the repertory?

20 A. There are four.

Q. Bearing what dates?

A. One dated the eleventh of May, eighteen hundred and seventy-one, is from the Executors to Samuel E. Molson and John Crawford *es-qual.*; another dated twenty-fifth May, eighteen hundred and seventy-one, from the same Executors to Mr. John Molson; another dated twenty-seventh of March, eighteen hundred and seventy-one, from the same Executors to W. H. Kerr and Alexander Molson, and also on the twenty-seventh of March eighteen hundred and seventy-one, another from the Executors to Joseph D. Molson.

Q. You will produce copies of these four discharges?

30 A. Yes.

Counsel for Defendant being called upon to cross-examine the witness, declares that he has no questions to ask, and the said deposition is declared closed.

And further deponent saith not.

(Sgd.) CHAS. DE B. MACDONALD,  
Stenographer.

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Schedule No. 64.

Deposition of Joseph Dinham Molson.

On this fifteenth day of \_\_\_\_\_ in the year of our Lord one thousand eight  
40 hundred and ninety-two, personally came and appeared Joseph Dinham Molson,  
of Lennoxville, aged \_\_\_\_\_ years, witness produced by the Plaintiffs, who being  
duly sworn, deposes as follows:—I am not related, allied, or of kin to, or in the  
employ of any of the parties in this cause; I am not interested in the event of  
this suit.

No. 52.  
Deposition  
of Joseph D.  
Molson, filed  
23rd Feb.  
1892.

No. 51.  
Deposition  
of E. W. H.  
Phillips,  
filed 2nd  
Feb. 1892—  
*continued.*

RECORD.

No. 52.  
Deposition  
of Joseph D.  
Molson, filed  
23rd Feb.  
1892—con-  
tinued.

*Q.* Please look at Plaintiffs' Exhibit number two, and see if you are the party mentioned therein?

*A.* Yes, I am the party mentioned in this exhibit.

*Q.* Please state whether you acted as executor of the estate of your father, the late Honourable John Molson, after your nomination referred to in this Exhibit number two, and if not, kindly state why?

*A.* I never acted in that quality because I was prevented from doing so. I was simply ignored through the advice of Mr. Abbott, not to me but to my uncle. When I was appointed, I saw uncle William—I saw him before he consented, because I would not accept my appointment without the concurrence of my uncle. He asked mother, and she, that is to say my mother, said she was too old, and uncle consented, and here are the words he made use of: "Well, just as you like, old lady, just as you like;" and we went off good friends. I saw my uncle after my appointment, and he then abruptly said "I do not recognize you as executor." 10

*Q.* And afterwards you served your appointment?

*A.* Yes, I served my appointment.

*Q.* You were always prepared and willing to act as executor, were you not?

*A.* I was always willing, prepared and anxious. I had considerable interest for my children, and it was my father's intention before his death that I should be executor if she saw fit. 20

*Q.* Did you at that time, or subsequently, have any connection with Honourable Mr. Abbott as to your right to act as such executor of the estate of your father the late Honourable John Molson?

*A.* None whatever.

*Q.* Did you, before the opening of the estate, see Mr. Abbott in reference to your right to act as executor?

(Objected to this question as irrelevant and illegal. Objection reserved.)

*A.* I met Mr. Abbott on the street, and I asked him "When is that business to be settled regarding the estate?" I told him "I am on my way to see Mr. Dorion, and if you do not see to that at once, I shall place it in his hands," and that is all that passed between us. 30

*Cross-examined under reserve of the above objection.—Q.* When was it, Mr. Molson, that you saw your uncle William, and he said he did not recognize you as executor?

*A.* I cannot tell exactly. It is about the thirteenth or twenty-third of May, eighteen hundred and sixty-one.

*Q.* Was it before or after your mother's death?

*A.* Mother was making the appointment at that time. It was before she died. 40

*Q.* What reason did your uncle William give?

*A.* He gave no reason. I did not discuss business with him.

*Q.* Mr. William Molson never discussed any affair with you, I understand, that in no instance your uncle William did not discuss business with you?

A. No, nothing in reference to acknowledging me as executor. He simply refused. RECORD.

Q. But before your appointment, before your father died, did your uncle William discuss business with you?

A. No, I saw him, I met him and said "How do you do, uncle."

Q. So, you never, before or after, had business dealings with him?

A. No, never anything of the kind. My uncle William was getting to be old, and myself, I was younger.

Q. I think you have been in the army?

10 A. Yes, in the year eighteen hundred and fifty (1850). I have been about ten years in the army.

Q. And since then you have been farming at Lennoxville?

A. Well, not exactly, I have been travelling a good deal.

Q. You have no occupation, you have not been attending to business since then?

A. No, I have not; whilst in India I got a sunstroke, and I have never been very well since.

Q. That is the reason why you have left the army?

(Objected to this question as irrelevant. Objection reserved.)

20 A. Yes.

Q. You were aware, at that time, of the division of your father's estate, of the schedule division?

A. I was aware of my own.

Q. Only?

A. Yes, only. I might have seen some of my brothers, but I cannot recollect if I ever did.

Q. At all events, you were aware at that time that your share was being given to you and that divisions of some kind or other were being made to your brothers respectively?

30 A. I was aware that Alexander and William Molson understood all this.

Q. You were aware that it was the division of the estate that you got?

A. I was aware that Alexander and William Molson were attending to the division.

Q. You were aware that a partition was being made?

A. Yes, I was, but I had no right to ask to see those schedules.

Q. You have been made a Defendant in any action taken by the Molsons Bank to protect the Bank in the event it might be condemned?

A. I was much amused about it.

Q. Were you or were you not made a Defendant in that cause?

40 (Objected to this question as the record speaks for itself. Objection reserved.)

A. Yes.

Q. That action is still pending?

A. Yes.

*Re-examined.*—Q. When you have stated in your examination in chief, that Mr. William Molson refused to acknowledge you as the executor of the p. 3716.

RECORD.

No. 52.  
Deposition  
of Joseph D.  
Molson, filed  
23rd Feb.  
1892—con-  
tinued.

estate of your father, the Honourable John Molson, was it before or after your appointment?

(Objected to this question as not arising out of the cross-examination.

Objection reserved.)

A. It was after the appointment.

And further deponent saith not. And this his deposition, having been read to him, he declares that it contains the truth and persists therein, and he hath signed.

Sworn and acknowledged before me, at Montreal, on this sixteenth day of February 1892, Henry Fry, Commissioner of the Superior Court, District of 10 Montreal.

The parties consent that this deposition have the same effect and force as taken in open Court.

Montreal, 16th February 1892.

ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Plaintiffs.  
ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Defendants.

Schedule No. 65.

Deposition of Edmund Barry.

No. 53.  
Deposition  
of Edmund  
Barry, filed  
1st Feb.  
1892.

20

On this twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared Edmund Barry, of the city of Montreal, Deputy Prothonotary, aged            years, and witness produced on the part of the Defendant, who, being duly sworn, deposeth and saith :

I am not related, allied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

Q. You are Deputy Prothonotary of the Superior Court ?

A. Yes, Sir.

Q. Will you produce a copy of the act of tutorship dated first March 30 eighteen hundred and seventy-one, for minors of Alexander Molson ?

A. Yes, I now produce the same marked Defendant's Exhibit " M 1 " at enquête.

Q. Will you also produce a certified copy of the act of appointment of Curator to the shares of Alexander Molson under the substitution created by the last will of the late Honourable John Molson dated the second of March eighteen hundred and seventy-one ?

A. I now produce a certified copy of the same marked Defendant's Exhibit " M 2. "

Q. Is there in the records of the Superior Court for the district of Montreal 40 a case pending now under the number nine hundred and forty-nine in which A. B. Stewart and others are Plaintiffs, and the Molson's Bank among others are Defendants, and George E. Simpson is curator ?



A. I now produce and file a copy of the writ and declaration plea and petition *par reprise d'instance* in that case as Defendant's Exhibit "M3."

Q. That case is still pending and undecided, is it not?

A. Yes, it is pending.

Counsel for Plaintiff being called upon to cross-examine the witness, declares he has no questions to ask, and this deposition is declared closed.

And further the deponent saith not.

C. DE B. MACDONALD,  
Stenographer.

RECORD.

No. 53.  
Deposition  
of Edmund  
Barry, filed  
1st Feb.  
1892—*con-*  
*tinued.*

10

Schedule No. 66.

Deposition of George W. Simpson.

On this twenty-ninth day of January in the year of our Lord one thousand eight hundred and ninety-two, personally came and appeared George W. Simpson, of the city of Montreal, broker, aged            years, and witness produced on the part of the Defendant, who, being duly sworn, deposeth and saith:—

I am not related, allied, or of kin to, or in the employ of any of the parties in this cause; I am not interested in the event of this suit.

Q. Mr. Simpson, you have already been sworn in this case?

20

A. Yes.

Q. You are the present Curator to the substitution in this case?

A. Yes, Sir, I am.

Q. Who are the children of Mr. Alexander Molson who would be entitled to an interest in the substitution?

A. I don't remember their names.

Q. Has he several children?

A. Yes, he has.

Q. How many of them are of age?

A. I rather think they are all of age, but I am not certain.

30

Q. You know that Mr. Molson has eight children, who have a claim under this substitution?

A. I know it from being told so in Court.

Q. You heard Mr. Molson say so himself?

A. Yes, and he knows best.

Q. All of which but two are of age?

A. Yes.

Q. There are two that are minors?

A. Yes.

Q. They are still living?

40

A. Yes, they are still living.

Q. When did Mrs. John Molson die?

A. That I don't know.

Q. It was in May eighteen hundred and sixty-two, was it not?

A. Yes, it was in May eighteen hundred and sixty-two.

No. 54.  
Deposition  
of G. W.  
Simpson,  
filed 1st Feb,  
1890.

RECORD.

Counsel for Plaintiff being called upon to cross-examine the witness, declares that he has no questions to ask, and this deposition is declared closed.

And further the deponent saith not.

C. DE B. MACDONALD,  
Stenographer.

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Schedule No. 67.

Deposition of Ed. W. H. Phillips.

No. 55.  
Deposition  
of E. W. H.  
Phillips,  
filed 2nd  
Feb. 1892.

On this fifteenth day of \_\_\_\_\_ in the year of our Lord, one thousand eight hundred and ninety-two, personally came and appeared Ed. W. H. Phillips, 10 Notary, of the city of Montreal, aged 30 years, witness produced by the Defendants, who being duly sworn, deposes as follows :

I am not related, alied, or of kin to, or in the employ of any of the parties in this cause ; I am not interested in the event of this suit.

*Q.* You are a notary in the city of Montreal ?

*A.* Yes, sir, I am.

*Q.* You are depositary of the greffe of W. A. Phillips ?

*A.* I am in charge of his office.

*Q.* You have made diligent search through the archives deeds executed and passed in connection with the estate of the late Honourable John 20 Molson ?

*A.* Yes I have.

*Q.* Well how many deeds were passed and executed by his executors and trustees ?

*A.* From the date of the death of the late Honourable John Molson to the end of eighteen hundred and seventy-five (1875) there are some thirty (30) odd deeds.

*Q.* By whom was the estate of the late Honourable John Molson represented in these deeds ?

*A.* I think by Messrs. William and Alexander Molson ; I do not think any 30 other did. There might be some, I cannot well say.

*Q.* You cannot say positively ?

*A.* Mrs. Molson may have.

*Q.* Do you find that in any cases Mr. Joseph Dinham Molson acted as executor and trustee of the estate of the late Honourable John Molson ?

*A.* No.

*Q.* Can you tell from the deeds whether he was aware that William and Alexander Molson were acting in their capacity of executors ?

*A.* Yes, I have the deeds before me and I find that in some he was acting individually and Messrs. William and Alexander Molson were acting in their 40 capacity of executors and trustees of the estate of the late Honourable John Molson.

*Cross-examined.—Q.* Of course you have no personal knowledge of what transpired from eighteen hundred and sixty (1860) to eighteen hundred and

seventy (1870), what you know is not as notary, but only as one being in charge of the office ?

*A.* Yes, sir.

*Q.* Please look at Plaintiffs' Exhibit No. 12 at enquête, and state whether Mr. Joseph Dinham Molson acted in his individual capacity ?

*A.* I think so ; there is a deed of sale from the same persons, William and Alexander Molson, wherein they acted in their capacity, to Joseph Dinham Molson on the same date, but it is not the same deed.

*Q.* Is there another deed ?

10 *A.* There is another deed from William and Alexander Molson in their quality of trustees and executors of the estate of the late Honourable John Molson to Joseph Dinham Molson personally.

*Q.* Look at Plaintiffs' Exhibit No. 12 at enquête and state in what quality Joseph Dinham Molson acted ?

Objected to this question inasmuch as the deed speaks for itself. Objection reserved.

20 *A.* The deed is from the executors to Joseph Dinham Molson who was acting as well individually as in his several capacities of tutor to Mary Anne Eliza Molson, Catherine Elizabeth Molson, Sarah Ellen Molson, Henrietta Eleanor Molson, John Dinham Molson and Mabel Isabel Molson minors issue of his marriage with Dame Eliza Day, &c., &c., in this deed he acted for his minor children and in his quality.

*Q.* Do you know any other ?

*A.* There is a sale on the twenty-second (22) of November eighteen hundred and seventy-one (1871) from William and Alexander Molson to Joseph Dinham Molson individually.

*Re-examined.—Q.* The evidence given about the contents of these deeds from the greffe of W. A. Phillips were given to you in charge and are in your hands ?

30 *A.* Yes, and I am unable to leave them.

And further deponent saith not.

And this his deposition having been read over to him he declares it contains the truth and persists therein and bath signed.

E. W. H. PHILLIPS.

Sworn and acknowledged before me at Montreal, on this 17th day of February 1892, John C. Griffin, a Commissioner, Superior Court, District of Montreal, and Notary Public,

The parties consent that this deposition have the same effect and force as taken in open Court.

40 Montreal, 16th February 1892.

ROBERTSON, FLEET, AND FALCONER,  
Attys. for Plaintiffs.

ABBOTTS, CAMPBELL, AND MEREDITH,  
Attys. for Defendants.

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No. 55.  
Deposition  
of E. W. H.  
Phillips,  
filed 2nd  
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*continued.*

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## IN THE COURT OF QUEEN'S BENCH.

No. 56.  
Appellants'  
Case, filed  
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## APPELLANTS' CASE.

## Document IV. Facts.

The late Honourable John Molson made his will on the 20th of April 1860. He died on the 12th of July 1860; the will was probated on the 12th of July in the same year (1860), and duly registered on the 19th of November following. A copy of the will was served upon and deposited with the Molsons Bank.

The testator then had 3,200 shares in the Molsons Bank stock in his name. After the probate of the will these shares were put in the books of the Bank in the name of the executors. 10

By the tenth clause of the will the testator declares as follows :

“ And as to the residue of my estate, real or personal, wheresoever the same may be, and of whatsoever the same may consist, of which I may die possessed, or to which I may then be entitled, I give, devise and bequeath the same to my said brother William Molson of the said city of Montreal, esquire, Mary Anne Elizabeth Molson, my beloved wife, and Alexander Molson, my youngest son now living, the survivors and survivor of them, and the heirs and assigns of the survivor of them, upon the several trusts herein- after declared, that is to say, upon trust. Firstly, to hold, administer and 20 manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease,—and further if my said wife be living at the expiration of that term, and shall have acceded to the condition expressed in the sixth section of this my will, until the expiration of one year from and after her decease. Secondly to sell and convey all such parts of my real estate as are not hereinbefore specifically devised, and as they shall deem it advantageous to my estate to sell, and to grant deeds of sale, and conveyance of the same, to receive and grant receipts for the purchase moneys, to invest the purchase moneys and all other moneys arising from, or accruing to my estate, and not already invested, on good and 30 sufficient security, either by way of hypothec, or mortgage of, or on real estate, or by the purchase of Government stocks, or stocks of sound incorporated banks, so as to produce interest, dividends or profits, to secure the regular payment of the annuity payable to my said wife under her said marriage contract, and the additional annuity hereinbefore bequeathed to her, and generally to comply with and fulfil all others the requirements of this my will :—and thirdly, at or as soon as practicable (after the expiration of the term of the said trust) to account for and give up the said residue (as the same shall then be found) to my residuary devisees and legatees hereinafter 40 named, in all questions touching the sale and disposition of any part of my estate, or the investment of moneys arising from my estate or accruing thereto the concurrence of any two of my said trustees (only during the trust) of whom while living, my said brother William Molson shall be one, shall be sufficient.”

Eleventhly,—“ If the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as hereinafter is provided, shall die or

“ be desirous of being discharged, or refuse or become incapable to act, then  
 “ and so often, the said trustee or trustees (and for this purpose any retiring  
 “ trustee shall be considered a trustee) may appoint any other person or  
 “ persons to be a trustee or trustees, in the place of the trustee or trustees, so  
 “ dying or desiring to be discharged, or refusing or becoming incapable to act,  
 “ and upon every such appointment the said trust premises shall (*ipso facto*)  
 “ become vested in the new trustee or trustees, jointly with the surviving or  
 “ continuing trustee or trustees, or solely as the case may require, and every  
 “ such new trustee shall have the same powers, authorities, and discretions as  
 10 “ if he had been originally appointed a trustee.”

The clause in said will marked “ Thirteenthly ” reads as follows :—

“ I further will and direct, that at the expiration of the term hereinbefore  
 “ limited for the continuance of the said trusts, the said residue of my estate,  
 “ real and personal, as the same shall subsist, shall under and subject to the  
 “ conditions and limitations hereinafter expressed, fall to, and become, and be  
 “ for their respective lives only, and in equal shares, the property of my said  
 “ five sons, or if any of them shall have died before the expiration of the said  
 “ term, the share of the one so dying, or who shall have died, shall become  
 “ and be for ever the property of his lawful issue in the proportion of one share  
 20 “ to each daughter, and two shares to each son, subject however to the right of  
 “ usufruct thereof on the part of his widow, if living, for so long only as she  
 “ shall remain his widow.”

The clause in said will marked “ Sixteenthly ” reads as follows :—

“ And I further will and direct that as soon as it may be practicable after  
 “ the expiration of the term hereinbefore limited for the continuance of the  
 “ said trust, the said trustees shall apportion and distribute the said residue of  
 “ my estate to and among the parties entitled thereto as hereinbefore directed,  
 “ taking care in such apportionment and distribution to provide (as far as  
 “ possible, and in such manner as the said trustees may deem best) as well against  
 30 “ risk of the capital of any of the shares being lost in the hands of any holder  
 “ thereof under substitution, or as usufructuary thereof, as against risk by  
 “ reason of my said engagements under the marriage contracts above referred  
 “ to, of my sons John and Alexander, and if in making the apportionment and  
 “ division of the said residue the said trustees shall deem it necessary, or  
 “ advantageous to sell any part of the said residue, and in lieu thereof to  
 “ apportion and divide the nett proceeds of the sales thereof, it shall be  
 “ competent for them so to do, anything hereinbefore to the contrary  
 “ notwithstanding.”

The clause in said will marked “ Eighteenthly,” reads as follows :—

40 “ It is further my express will, and I hereby specially direct and ordain as  
 “ an essential condition of my bequests aforesaid in favour of my said five sons  
 “ and of their widows respectively, that all the estate, interest and property,  
 “ whether by way of usufruct, annuity or otherwise, and every part and portion  
 “ thereof which my said sons respectively or their widows respectively shall or  
 “ may in any wise take, or receive or be entitled to take or receive under this  
 “ my will, and also all interest or revenues, or income in any wise to arise  
 “ therefrom, shall be and remain for ever exempt from all liability for the debts  
 “ present and future of them or any of them, and shall be absolutely insaisissable

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“ for any such debts, or any other cause whatsoever, and shall be, and shall be held and taken as being, to all intents and purposes *legs d'aliments* by me hereby made and granted in favour of them, and each of them, and shall moreover be insusceptible of being by them, any, or either of them, assigned or otherwise aliened, for any purpose or cause whatsoever.”

The clause in said will marked “Twenty-secondly” reads as follows:—

“ I hereby constitute and appoint my said three trustees hereinbefore named and the survivor and survivors of them, to be executors, and executor of this my last will and testament, and I hereby give and transfer unto them as trustees and universal fiduciary legatees and devisees, under the same 10  
“ and also as executors thereof, the seizin and possession of all my estate, real and personal moveable and immoveable, wheresoever the same may be, and of whatsoever the same may consist, and my further will is that the powers of my said executors and executor, shall be and they are hereby continued beyond the time limited by the law of this part of the Province of Canada, and until all and every of the obligations of this my will shall be accomplished.”

The clause in said will marked “Lastly” reads as follows:—

“ And lastly, provided always, and I hereby direct and authorise my dearly beloved wife, by a deed and instrument, in writing to be by her signed, sealed 20  
“ and delivered in the presence of and attested by three credible witnesses, to nominate, substitute and appoint any other fit person to be a trustee, executor and universal fiduciary legatee and devisee of this my will in the place and stead of my said wife, from and after her decease, and when such new trustee and executor shall be nominated and appointed, as aforesaid, all the trust, estate, moneys, and premises, then subject to the trusts and provisions of this my will, shall be effectually assigned, transferred to, and vested in, the said surviving and continuing, and new trustee, to be held by them, and the survivors or survivor of them, upon the trusts of this my will in all respects 30  
“ as if such new trustee had been originally appointed by this my will and the person so to be appointed by this my will and the person so to be appointed trustee as aforesaid shall have all the powers and authorities by this my will vested in my said dearly beloved wife, in whose place and stead he shall be substituted as aforesaid.”

The wife of the testator forthwith on the death of her husband, complied with all the terms and conditions imposed in the sixth clause of the will.

The wife and executrix died on the 5th May 1862.

The wife on the 13th May 1861, by virtue of an act before three witnesses T. Doucet, N. P., appointed Joseph Dinham Molson, one of the legatees, to be from and after her decease, trustee, executor, etc., and the said Joseph Dinham 40  
Molson caused copies of the said act, and appointment, to be duly notarially served on William Molson, executor, and President of the Molsons Bank, and Alexander Molson, executor, viz., on the 17th day of April 1863.

On the 25th March, 1871, William Molson, executor (and President of the Molson's Bank,) and Alex. Molson, executor, under the advice, supervision, and approval of Mr. Abbott, the then solicitor of the Molson's Bank, rendered their final statement of account to the heirs of the estate, of the total assets then on hand, at the then termination of the trust, one statement of the said

account was rendered to each of the five heirs, or their representatives, and to each of them at that time, a statement of the assets that it was proposed should be allotted to each of them individually as legatees, so that they might see that they were all treated alike so far as the amount of assets to each was concerned.

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On the said 25th or the 27th March 1871, a depot was made in the office of W. A. Phillips, Notary Public, of the detailed account of the executors during the trust, and the trust thereupon ended, except to divide the assets as they then subsisted according to the terms of the will in the 16th clause and  
 10 according to the five statements, all of them being submitted to the five heirs as substituted legatees.

On the said 25th March 1871, the residuary estate and assets consisted, besides other assets, of thirty-two hundred (3,200) shares of Molsons Bank stock, being exactly six hundred and forty (640) shares of said Molsons Bank stock for each and every one of the five heirs and legatees of the said will, and so it appeared in each of the five statements submitted to each of the five heirs.

On the 27th March 1871, before W. A. Phillips N. P. the executors allotted and handed over to the trustees of the estate of the late Geo. E. Molson the  
 20 one-fifth of the total assets according to one of the said five schedules, and on the same day to Joseph Dinham Molson (*ès-qual*) another of the heirs, his one-fifth of the total assets, to each their six hundred and forty shares of Molsons Bank stock and due care was taken in both cases in the books of the Molsons Bank, by the officers thereof, when the transfers were made to preserve the rights of the respective substitutions as directed under the thirteenth, sixteenth, and eighteenth clauses of the said will, then in the possession of the Molsons Bank.

On the 5th April 1871, nine days later without any written document or notarial deed, William Molson and Alex. Molson, executors, simply sold or  
 30 transferred to Alex. Molson, individually, not as *grévé de substitution* the one-fifth of the total (3,200) shares of Molsons Bank stock, viz., his 640 shares, the same being done under the counsel and advise of Mr. Abbott, the then solicitor of the Molsons Bank and of the executors, but no cash passed between them, consequently the 640 shares of Molson's Bank stock were not tied up, or substituted as specially directed by the terms of the will, this was some months previous to Alex. Molson receiving the balance of his substituted assets, which he only received by notarial documents before said W. A. Phillips, N. P. on 15th June following.

On the 11th May 1871, one month and six days later, Wm. Molson, and  
 40 Alex. Molson, before W. A. Phillips, N. P. the same Notary Public, allotted and handed over to Samuel E. Molson as an heir his one fifth of the total assets of the estate, in which was included his (640) shares of Molsons Bank stock and due care was taken in the books of the Molsons Bank by the officers thereof to preserve the rights of the substitution, created under the eleventh, thirteenth, sixteenth and eighteenth clauses of the will, as regards these 640 shares Molsons Bank stock as being part of the original 3,200 shares Molsons Bank stock so substituted.

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On the 25th May 1871, the Executors, William Molson and Alex. Molson, before the said W. A. Phillips, N. P. but under the advice of Mr. Abbott, their solicitor, and the then solicitor of the Molsons Bank, by virtue of a notarial deed, handed over to John Molson, who was at that date the accountant of the Molsons Bank, and one of the five heirs, individually and without any regard to the substitution created under the eleventh, thirteenth, sixteenth and eighteenth clauses of the will, his one-fifth of the total assets therein nominally including the 640 shares of Molsons Bank stock, his one-fifth of the 3,200 shares Molsons Bank stock, so doing by adding the market cash value of said 640 shares to the amount of cash handed him, but this was only nominal, as no cash 10 passed between them as regarded the said 640 shares, when the same were simply transferred to the said John Molson (one of the heirs) individually, not under substitution, on the fifth of April just previously past.

And on the 15th June 1871, the executors Wm. Molson and Alex. Molson, by virtue of a notarial document, passed before the said W. A. Phillips and colleague N. P. allotted and handed over to Alex. Molson, individually (as heir) his one-fifth of the total assets of the estate of the late John Molson, less the 640 shares Molsons Bank stock already sold or transferred to him individually on the 5th April 1871. In doing so and to evade the substitution created under the will, they also, under the counsel and advice of their solicitor Mr. J. 20 C. Abbott, who superintended and advised the executors in the final settlement of the estate, before said Phillips N. P. passed also at the time another special deed of sale of the house 231 St. James street, which fell to his one-fifth share as legatee and heir. The said deeds of sale and conveyance were both dated 15th June 1871, this deed of sale of the house 231 St. James street has since been virtually annulled by the Court of Appeals here and the Privy Council in England, and the property 231 St. James street declared substituted, and the deed of sale of the same to be null and void.

The expressed intention of the testator is clear :

(a) He declares that all the residue of his estate, real or personal, is 30 given to his brother William Molson, his wife, and his son Alexander Molson upon trust to administer the same for the term of ten years from and after the date of his decease.

(b) Until the expiration of this term to sell a part of his real estate only if necessary or advantageous to invest the purchase moneys and other moneys not already invested in good and sufficient security.

(c) After the expiration of the term of the trust, to give the amount of the residue to his residuary devisees who became vested therewith.

(d) That on any sale or investment two of the trustees, one of whom should be the brother William Molson, are required. 40

(e) If any of the trustees become incapable of acting as such, those remaining may appoint another.

(f) The testator specially declares that at the expiration of the ten years the residue, as then substituted, becomes the property of the said five sons subject to the conditions of the will in equal shares.



(g) The testator further directs that after the expiration of the trust the apportionment of the residue shall be made with special direction to provide against the risk of the capital of any of the shares being lost in the hands of any holder under substitution.

(h) In the apportionment of the residue, if necessary or advantageous to sell any part of the residue and to apportion in *lieu* thereof the proceeds, the trustees are authorised to do so.

(i) By the eighteenth clause of the will the testator further declares, as his express will, and as an essential condition of the bequests, that all the estate and every part thereof shall be and shall remain for ever exempt from all liability and absolutely insaisissable, and had as *legs d'aliments*, and insusceptible of being assigned or aliened for any purpose or cause whatsoever.

(j) The testator authorises his wife to substitute any other person as executor in her place as if appointed by his will.

The wife and the executrix died on the 5th of May 1862 after having appointed on the 13th of May 1861, Joseph Dinham Molson, one of the legatees as executor, of which appointment William and Alexander Molson, the executors, were notified.

It is impossible to express in clearer language the intention of the testator, which is, that the trustees were authorised to administer the residue of the estate during the ten years only after the decease of the testator, that after that date, all moneys invested in Bank stock or shares became the absolute property of the devisees subject to substitution.

That as soon as practicable, the apportionment should be made subject to all the conditions and limitations provided by him more particularly to the substitution; and no more imperative mandate could be given to the executors than that of the testator, that in the very apportionment they were bound to secure the capital of any of the shares in the hands of any of the holders under substitution against any risk whatever, and could not dispose of any part except for apportionment.

The testator specifically orders that the proceeds of any sale must be so protected, as well as any part of the residue itself.

#### Declaration.

Upon these facts the curator duly appointed to the substitution established by the will, Andrew B. Stewart, Alexander Molson, as institute and legatee of the one-fifth of the estate under substitution, and as charged with the trust of maintaining his share of the estate as aliments for himself and his wife and children and Herbert Molson one of the substitutes brought the action against the Molsons Bank alleging the will and probate and dwelling particularly on the several clauses herein above enunciated and claimed that the transfer made to Alexander Molson on the 25th March 1871 was illegal and null, the powers of the executors having terminated and that the sale or alienation by them, of the 640 shares of Bank stock and to Alexander Molson was contrary

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By their declaration the Plaintiffs prayed that the Bank be condemned to deliver over transfer and place in the name of the said Alexander Molson as institute and of the said substitution under the will of the said late Honourable John Molson six hundred and forty shares of the capital stock of the said Molsons Bank within a delay to be fixed by the judgment and in default thereof to be condemned to pay the said Plaintiffs the sum of sixty thousand dollars with interest together with the further sum of seventy thousand dollars being the dividends on the same with interest from date of service of process the whole to be invested for the said substitution in the name of the said curator. 10

To this action the Bank made the following pleas :

#### Pleas.

Besides two preliminary pleas which were disposed of and which cannot be the subject of any discussion before this Court, the pleas to the merits in substance allege a pending suit in the Superior Court in which the same Plaintiffs seek to recover from the same Defendants, jointly and severally, and to place in the name of the said Alexander Molson as institute to the said substitution, 160 shares of the capital stock of the said Bank and to pay to the said Alexander Molson on behalf of the substitution and to the curator, the sum of fourteen thousand dollars, alleged to be the amount of the dividends upon shares since the 13th day of December 1875, with interest, and in default of restoring the same, the Plaintiffs ask that they should be jointly condemned to pay the sum of fifteen thousand dollars currency with interest from the date of service of process, the whole to be invested in the name of the said Stewart. 20

That the said Plaintiffs in effect alleged that the said 160 shares were a part of the 640 shares in question in this cause, and Defendants pray that no judgment be rendered affecting a greater part of shares than 480. 30

By the second plea the Defendants set up a general denial of the allegations of Plaintiffs' action.

By another plea the Defendants allege that the institute under the substitution is still living and was a consenting party to the disposal and transfer of the shares of the capital stock which at the time of his death stood in the name of the late Honourable John Molson or which at any time stood in the name of the executors of the said late Honourable John Molson.

That the said Andrew B. Stewart, and Herbert S. S. Molson, have not any vested right to or interest in the said shares nor are they entitled to have the shares invested in their names or to have or receive the said shares or any part of the dividends or any sum in lieu thereof, even if they formed part of the estate and succession of the said late Honourable John Molson, which the Defendants deny. 40

That there are other alleged substitutes under the said alleged substitution living some of age and some minors, who are not parties to the present proceedings either personally or by their tutors.

That the said Plaintiff Stewart and the said Plaintiff Herbert S. S. Molson have no legal right to have or maintain the present action, nor have they ever been legally authorised to prosecute the same.

By the fourth plea the Defendants allege that the said Alexander Molson was a trustee of and under the will of the said late Honourable John Molson, and was a party both personally and as trustee and executor to all that was done for the carrying out of the provisions of the said will, and the disposal of the shares of stock in the said Bank as portion of the estate of which the said Alexander Molson was institute and is by law in consequence precluded from having or maintaining the conclusions of the said action, having by his own acts so far as regards the Defendants now pleading, disposed of all interest in the said stock and dispossessed himself thereof and divested himself of all rights the property therein.

That it does not appear by the said declaration what part of the said stock or interest the said Alexander Molson, or the said A. B. Stewart or the said Herbert S. S. Molson claim to be entitled to, and they cannot claim the same jointly ;

That no stock nor shares in the Defendants' Bank, in the Plaintiffs' declaration referred to, were by law or ever became subject to any substitution under the said will of the late Hon. John Molson, nor was any substitution created by the said last will in favour of the children of the said Alexander Molson which affected any stock or shares in the said Bank ;

That no property of the estate of the said late Honourable John Molson or proceeds of property of the said estate subject to any substitution in favour of the children of the said Alexander Molson under the said will was ever invested in the stock of the said Bank, nor were the formalities required by law for the investing of property of substitution ever done or performed so as to subject any stock or shares to such substitution ;

That by the last will and testament of the late Honourable John Molson, his brother William Molson, Mary Ann Elizabeth Molson, wife of the said John Molson and Alexander Molson one of the Plaintiffs and such survivor and survivors of them were appointed executors thereof and their powers were extended beyond the date limited by law ;

That the said Dame M. A. Elizabeth Molson did not act as one of the trustees or executors, and on the fifth day of May 1862 departed this life ;

That the only shares entered in the books of the said Bank in the names of William Molson and Alexander Molson executors of the estate were 3,200 ;

That by the will of the late Honouereble John Molson invoked by the Defendants, the executors had full power and authority to sell, assign, transfer or dispose of the said stock as they should see best in their discretion ;

That on the fifth day of April 1871, at the office of the said Bank at Montreal, the said William Molson and Alexander Molson as executors of the estate of the said late Honourable John Molson, required the said Bank to accept and receive a transfer thereof to the said Alexander Molson of 640 shares of the capital stock of the said Bank subject to the rules and regulations of the said Bank and thereupon by writing *sous seing privé* under their hands

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and entered in the transfer book of the said Bank the said executors did thereby assign and transfer unto the said Alexander Molson the said 640 shares in the capital stock of the said Bank absolutely and unconditionally, and the said Alexander Molson then and there accepted the said assignment of the said shares and said transfer;

That the said Alexander Molson by the said will and by virtue of the premises, was the true and legal holder and possessor of the said 640 shares and was not at any time the apparent holder or owner of any other share or shares of the capital stock of the said Molsons Bank, as part of the estate and succession of the said late Honourable John Molson;

10

That by reason of the premises, the said Alexander Molson became and was the absolute owner of the said 640 shares of the said Bank and did at divers times assign and transfer the same in the books of the Bank in the manner required by law to divers parties for value received, and the said Bank was not bound by law to see to the disposal of the proceeds of any such stock, if the same was ever subject to any trust expressed, implied or constructed, which the Defendants deny;

That by reason of the premises and by law the Defendants are not indebted to the Plaintiffs as alleged.

#### Answers to Pleas.

20

The Plaintiffs in answer to the first plea allege, denying the allegations but admitting that an action had been brought by the Plaintiffs claiming from Defendants the restoration of 160 shares; that these 160 shares were a portion of those claimed by the present action, and declaring their willingness that the payment to the Plaintiffs of the 640 shares or their value should be a discharge of the action so instituted for the 160 shares.

To the second plea the Defendants opposed a general denial;

To the third plea the Defendants answered that the shares referred to in Plaintiffs' declaration were always the property of the substitution created by the will of the late Honourable John Molson;

30

That the trusts established by the will were established subject to the substitution, and the powers of the executors were limited as regards the sale of the property for investment only and for the term of ten years from the date of the death of the testator, beyond which term the executors had no authority nor power to convey or alienate the property of said substitution;

That the shares claimed by the Plaintiffs' declaration always were the property of the said substitution and the said Alexander Molson never had nor could have possession thereof, otherwise than as institute under said will, nor any power nor authority to dispose of them by pledge or otherwise.

General replications were filed and the parties proceeded to evidence.

40

The parties adduced their evidence at enquête, and the evidence of the Plaintiffs is printed at length.

Only three witnesses were adduced by the Defendants—Edmond Barry, Deputy Prothonotary, who produced the act of tutorship of Alexander Molson to minor children, and his appointment as curator to the share of Alexander

Molson under the substitution created by the will of the late Honourable John Molson, dated 2nd March 1871 (Defendants' Exhibit M 2), and also establishing the pendency of the suit brought by A. B. Stewart in the Superior Court against the Defendants for the 160 shares.

\*2. George W. Simpson, the curator, who proved that other children of Alexander Molson than the Plaintiffs were still living.

3. W. H. Phillips, the notary, who testifies that from the records in his office as notary, the only two acting trustees and executors were William and Alexander Molson.

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\* Sic.

10 The Issues raised by the pleas and left to the decision of the Court were :—

1. The institute, Alexander Molson, being living and the other Plaintiffs having no vested right in these shares and there being other substitutes living, they cannot bring the present action.

2. That Alexander Molson being a trustee and a party to the transfer is precluded from taking any action after having dispossessed himself of all his interest and the other Plaintiffs cannot claim jointly with him.

3. That no part of the estate John Molson subject to substitution was invested in Bank stock or could be so invested.

20 4. That Dame Elizabeth Molson never acted as executor, and the only executors were William Molson and Alexander Molson; the shares were entered in their names only and they had full authority to transfer them.

5. That the Bank was not bound to see to the disposal of the proceeds of such sale.

The contestation therefore is reduced to the following propositions :—

First. Are the Plaintiffs under the circumstances stated in the declaration legally entitled to bring the present action ?

30 Second. Did the law allow the testator to substitute Bank stock ? and, was the substitution of the stock effective when the transfer was made by the executors ?

Third. Has the testator conferred on the executors any power or authority to dispose of the investments made by the testator in Bank stock and could they be justifiable in doing so more particularly after the expiration of the term fixed by the testator for their office ?

Fourth. Does the law even for the purpose of necessity or advantage sanction an alleged sale made of invested capital in Bank shares by one of the executors to the other who was an institute and the delivery to him of the net proceeds of such sale without limitation or condition ?

40 Fifth. Could the appointment of Joseph Dinham Molson be ignored or disregarded by the other executors ?

Sixth. Can the Bank plead ignorance of the provisions of the will and are they exempt from all responsibility in allowing the stock to be so transferred ?

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Seventh. Is Alexander Molson precluded from demanding the nullity of the transfer made to him individually of the 640 shares, and the dividends accrued since their alienation?

*First Proposition* :—The Plaintiffs were entitled to bring their action if the facts alleged in the declaration can be proven.

Whatever might have been the law previous, it must be held that by the Code the substitutes or their representative the Curator to the substitution have an unquestionable right to adopt every conservatory process relating to his eventual right.

Art. 956.—“The substitute or his representatives may before the opening 10  
“perform all acts of a conservatory nature connected with his eventual right,  
“whether against the institutes or against third persons.”

The institute, Alexander Molson, being at the same time bound to reserve the property bequeathed to him as aliments for himself, his wife and children, and the shares which he claims to have been illegally transferred having by the express will of the testator been given to him with the special condition that they could never be alienated or seized, and confided to his care and to the other executors in trust under an imperative injunction from the testator to take special care to secure the capital of such shares for the *appelés* substitutes; if in violation of all these conditions the shares have been transferred and are 20  
lost to the estate without any representative value in their stead, who else could bring the present action; and on what principle could it be denied Plaintiffs. The declaration alleges that the parties who dealt with the executors in the institute knew and had full notice of their incapacity to convey them. that the transaction was an absolute nullity.

Moreover, the curator to the substitution represents the substitutes and is bound to take all conservatory process in their interest; it cannot be said that the demand to have these shares restored to the substitution according to the positive directions of the testator is not of paramount interest for the substitutes and is not essentially a conservatory process. 30

The opposite view would have for consequence to defeat the wisest provisions of a testator's intentions and render nugatory the most important and most valued benefit conferred by our law, the unlimited liberty of disposing of property without restriction or limitation.

To refuse the right of action in such a case to the institute during his lifetime because of his participation in the illegal transaction, would frustrate the intentions of a testator, consecrate irrevocably the violation of the law and possibly entail irreparable loss. There can be however no ground of objection to the proceeding on behalf of the substitution by the curator, and any of the substitutes who may think it necessary to act in order to protect their 40  
interest.

Civil Code, Art. 944 :—

“The institute holds the property as proprietor, subject to the obligation of  
“delivering over, and without prejudice to the rights of the substitutes.”

Art. 945 :—

“If all the substitutes be not born, the institute is bound to obtain, in the

“manner established as regards tutors, a judicial appointment of a curator to the substitution, to represent the substitutes yet unborn, and to attend to their interests in all inventories and partitions and other circumstances in which his intervention is requisite or proper.

“The institute who neglects to fulfil this obligation may be declared to have forfeited in favour of the substitute the benefit of the dispositions.

“All persons who are competent to demand the appointment of a tutor to a minor of the same family may also demand the nomination of a curator to the substitution.

10 “Substitutes who are born, but incapable, are represented as in ordinary cases.”

Thévenot d'Essaules. *Traité des Substitutions*, Chap. XIV.

“Par le droit romain, le grevé chargé de rendre au substitué ses deniers, n'était point tenu d'en faire emploi.

“L'ordonnance des substitutions, veillant encore ici aux intérêts des appelés a imposé au grevé cette obligation.

“L'emploi doit être fait en préférence du premier substitué, s'il existe, ou, s'il n'est pas né, en présence d'un tuteur ou curateur à la substitution.”

Id.—Chap. XLVI., No. 767.

20 “Nous ne pratiquons pas ordinairement les actions à fin de caution, et subsidiairement d'envoi en possession, qui avient lieu habituellement chez les romains.

“De sorte que par notre usage, il exerce valablement toutes les actions qui ne tendent qu'à empêcher qu'on ne rende son espérance illusoire et vaine.

“On ne peut pas prétendre qu'il soit contre les règles de permettre au substitué ces actions, dans un temps ou il n'a encore aucun droit existant; puisque les lois romaines lui en donnaient une de la plus grande utilité.

“Tel est le vœu formel de l'ordonnance des substitutions.

30 “Elle permet au substitué et même elle le charge de faire procéder à l'inventaire des biens du substituant.

“Elle lui permet aussi de faire toutes les diligences nécessaires pour l'emploi des deniers, et singulièrement de former des oppositions entre les mains des débiteurs.”

In the present case the executors disregarded all the provisions of the law requiring the appointment and the concurrence of a curator to the substitution in the management and disposal of any part of the estate, they do not invoke any such appointment and they produce at enquête an act of curatorship dated 2 March 1871, nominating Alexander Molson himself as curator to his own share in the substituted property.

40 It is difficult to understand the object of such a document, which on the face of it is an absolute nullity, as Alexander Molson the institute could not possibly be curator to himself and called to protect the interests of the substitutes and the substitution, against his own acts. It only shows that the executors were aware of the necessity of the appointment of a curator and that his share in the estate was substituted, whilst at the same time they violated the provisions of the law respecting the appointment and necessary concurrence of such curator.

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*Second Proposition.*—Did the law allow the testator to substitute Bank shares?

The article of our Code 831 embodies the principle enacted by the Statute of 1801 which has ever been the law governing in the Province of Quebec and enacts that every person may dispose freely, by will, without any reserve or restriction, excepting only the prohibition and restriction in cases of nullity mentioned in the Code, and all dispositions contrary to public order or good morals.

The original statute was even more general in its terms and the liberty of disposing is unrestricted, in favour of any person or persons whatsoever of all 10 and every their lands, goods or credits without reserve, restriction or limitation whatsoever.

Article 931 of the Code says:—That “moveable property as well as “immoveable may be a subject of substitution unless corporeal moveables, “which are subject to a different disposition. They must be publicly sold and “their price invested for the purpose of substitution, ready money must also be “invested in the same manner. The investment must in all cases be made in “the name of the substitution.”

Assuredly there can be no question raised with such clear enactments as to the legality of the substitution of moveable property, and more particularly 20 of Bank stock.

Since the statute of 1801 (the Will Act) and under the provisions of the then existing laws of France introduced in Canada and which were never altered, innumerable estates have been transmitted by testators, some comprising immoveable together with moveable property, capital sums, etc., in a very large proportion. In several cases the wills have been contested on various grounds, but never was a question raised as to the validity of the substitution of moveables, the contrary having been solemnly recognized by all our Courts, and even in the Privy Council.

In the estate of Jacques Dorion, the will of 1821 referred to money or 30 capital invested and substituted. Actions were brought by the legatees for the maintenance of their legacies; and the heirs at law particularly demanded the nullity of the will, and curators were ordered to be appointed by the Courts to administer these estates as substituted property. On one occasion only after the will had been maintained was a question raised as to the validity of the substitution by reason of its comprising or applying to moveables only and the contention was dismissed by the Superior Court. In this case of *Dorion and Dorion*, which related to an estate mostly composed of moneys and personal property, the validity of the will was questioned on every possible 40 ground, and notwithstanding that action was instituted by no less a lawyer than the late Sir James Stuart, defended by the late C. S. Cherrier, no idea was ever raised in their minds that such a question could be mooted. The case went to the Privy Council, and the will maintained, and has been ever since for threequarters of a century acted upon as legally establishing a substitution of moveables, the capital sums having always remained as such, and invested on loans to several parties in various sums through the instrumentality of the curator to the substitution, without any objection



having been raised through the innumerable actions in connection with such substitution.

See cases of *Robert & Dorion*, 3 L. C. Jurist, p. 12; *Kirzkowski & Dorion*.

In fact there has not been a will of any large estate in Canada during the last and in the present century creating a substitution, which did not carry with it or comprise a substitution of moveables. Reference could also be made to the Penderleath Christie estate, the Cuthbert estate and the Masson estate, the latter comprising a direct substitution of the capital in the most extensive commercial business in Canada at the time, and Bank stocks for hundreds of thousands of dollars. The wills and their execution having been made and directed by the most distinguished jurists of the time.

In the case of *Mitchell vs. Moreau* brought by one of the substitutes (*appelés*) under the will of Jacques Dorion in 1866 the question was raised directly and the Superior Court Mr. Justice Berthelot who had been the associate of Sir Louis H. Lafontaine unhesitatingly pronounced this substitution of moveables to be according to the law of this province at the date of the will in 1821.

13 Revue Légale, p. 684, C. S. M.—*Mitchell v. Moreau*.

20 *Jugé*—“ Considérant que feu Jacques Dorion en son vivant marchand de la Paroisse de St. Eustache, dans le Bas-Canada par son testament olographe, fait au dit lieu de Saint-Eustache, le neuf Mars mil huit cent vingt-et-un, a légué à Charles Dorion, son frère, marchand du même lieu, toutes les sommes de deniers et tous les biens immeubles qu’il délais serait à l’époque de son décès pour par le dit légataire jouir de tels biens pendant sa vie et à la charge de les transmettre à ses enfants nés et à naître en légitime mariage, créant par la une substitution ;

“ Considérant que le dit Jacques Dorion a pareillement légué les mêmes biens aux enfants du dit Charles Dorion, nés et à naître d’aucun légitime mariage qu’il pourrait contracter, à la charge par tels enfants de transmettre les mêmes biens à leurs enfants nés et à naître en légitime mariage ;

“ Considérant qu’il est en preuve que le dit Jacques Dorion est décédé dans le Bas-Canada vers le vingt Janvier mil huit cent vingt-deux sans avoir révoqué son dit testament qui a été prouvé et publié suivant la loi ;

“ Considérant que les biens meubles dont le dit Jacques Dorion a ainsi disposé pouvaient d’après la loi, de même que ses biens immeubles former l’objet d’une substitution dans les limites prévues par la loi.”

The only decision apparently conflicting is a judgment in a case of *Joubert v. Walsh* of Judge Mathieu in 1883 where a claim was made for forks and knives and other moveables, articles of furniture specifically mentioned and which had never been sold and proceeds invested, and the Court is reported to have dismissed the action on the ground that the ordonnance of 1629 prohibited substitution of moveables.

This decision was evidently given in ignorance of the previous one of *Mitchell and Moreau* and could be justified on the ground that the ordonnance

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of 1747 applied to such a case, as there had been no investment ordered by the testator and none made of the proceeds.

It never was held by any Court that an ordonnance subsequent to the creation of the Conseil Supérieur had no application in Canada, when the provisions contained regulations on uncertain or unsettled points of law or jurisprudence but the contrary principle is laid down and generally admitted.

With respect to substitutions of moveables the universal jurisprudence in France and all the writers conclusively show that substitution of capital invested on rentes although considered as moveable and choses précieuses or 10 jewels were subject to substitution before the ordonnance of 1747.

*Domat*, one of the greatest authors on French law who wrote before the ordonnance of 1747 and a century after the ordonnance of 1629 says in *Loix Civiles*, Liv. V. Sect. II.

“ I.—On peut faire une substitution ou un fidéi-comis particulier comme d'un fief d'une maison, ou d'un autre fond, et d'autres sortes de biens, d'une somme d'argent ou de toute autre chose qu'on veuille faire passer d'un successeur à un autre. Note.—*Potest etiam quis singulas res per fideicomissum relinquere, veluti fundum, argentum, vestam & pecuniam numeratam. Inst. de. sing. reb. per fideic. relictis.* 20

“ II.—Le testateur peut charger d'un fidéi-comis particulier ou son héritier, ou un légataire, soit d'une chose de l'hérédité, ou qui leur soit propre ou à prendre d'ailleurs.

“ IV.—Pour ce qui regarde les expressions, de quelque manière que le testateur se soit expliqué, son intention connue doit servir de règle. Et les expressions même qui semblent laisser le fidéi-comis à la discrétion de l'héritier ou du légataire qui en est chargé l'obligent autant que celles qui ordonnent en termes exprès.

*Bouchel*, Trésor du droit Français, vol. 3, p. 554—

“ Comment on peut substituer en pays coutumier. Tout ainsi que par 30 donations et contrats, entre vifs il est permis de disposer de tous ses propres, de même se peut faire par forme de substitution contractuelle entre vifs, et la donation peut contenir une substitution; mais par testament la substitution de tous biens peut valoir avec deux tempéraments; l'un que la substitution vaudra usque ad legitimum modum et jusques à la concurrence des meubles, acquets et conquests et du quint des propres ou autre quantité dont la coutume permet de disposer, arg. l. *Sancimus C. de donationibus*, suivant les arrêts donnés en telle matière. L'autre est que la substitution tiendra pourvu que ceux qui y ont intérêt et en faveur desquels la coutume est introduite y prêtent consentement. 40

*Pothier*. Des Substitutions.

“ Les substitutions universelles sont composés de toutes les choses, tant meubles qu'immeubles auxquelles a succédé celui qui est grevé.

“ Mais il y a aussi cette différence entre les meubles et les immeubles, que ceux-ci sont compris en la substitution pour être rendus en nature lors de

“ son ouverture ; au lieu que les meubles y sont compris pour être vendus, et au prix, fait emploi en héritages ou rentes, qui seront compris en la substitution en la place des dits meubles, comme nous le verrons plus amplement en la section suivante, ou nous verrons aussi les exceptions de cette règle par rapport à certains meubles qui peuvent être conservés en nature.”

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*Bloudeau et Gueret*, Journal du Palais. Tome I., p. 156.

“ Si une substitution faite par un père et une mère en ces termes ; De la part et portion que leur fils pourrait amener de leur successions, tant en meubles qu'immeubles, est valable ; ayant pour prétexte les débauches et les dérèglements de ce fils.

“ Vincent Traverse Bourgeois de Paris, et Marguerite Gridé sa femme, font un testament mutuel. Entr'autres choses ils déclarent qu'ils ont apporté tous les soins possibles à l'éducation de Vincent Traverse, leur fils, et qu'il s'est abandonné à des débauches, etc. Ils ont fait leur testament substituant tous leurs biens meubles et immeubles.”

The will was contested on the ground that the indefinite right to the moveables in the community property could not be subject to substitution. The case was decided maintaining the substitution and on appeal the Court confirmed the judgment in the following terms.

“ Ces choses ainsi établies, il est aisé de répondre aux deux objections qui ont été faites.”

“ A l'égard de la première on dit que les meubles ne peuvent être compris dans la substitution. On répond à cela qu'il faut suivre les termes du testament qui substituent toute la part et portion héréditaire de Vincent Traverse, en quelque chose qu'elle puisse consister, soit meubles ou immeubles.”

“ D'ailleurs quand on dit que les meubles ne se peuvent substituer, cela s'entend de quelques meubles en particulier, mais s'agissant d'une universalité de meubles, il est certain qu'elle peut être comprise dans une substitution parce qu'en ce cas c'est *nomen juris, jus univsum et incorporale*, qui peut tomber sous les mêmes dispositions dont les immeubles sont susceptibles ; c'est la disposition qui est établie dans l'article 97 de la Coutume de Paris.

“ Sur ces raisons alléguées de part et d'autre est intervenu arrêt par lequel la Cour a mis et met l'appellation au néant, ordonne que ce dont est appel sortira effet et condamne les appelants en une amende de douze livres et aux dépens. Prononcé le 21 Janvier, 1672. Monsieur le Bousts, Rapporteur.— Voyer les arrêts des 14 Mai 1672, 18 Janvier 1678, 31 Mai 1680, 11 Avril 1686, 9 Décembre 1672.”

*Merlin* Rép. Vo. Substitution fidéi-commis, sect. 6 ; I. art 3, treating of the question of substitution of moveables, refers only to the Roman Law and to the ordonnance of 1747, he says, “ Le droit romain permettait de substituer des meubles tels qu'un habit, un vase une somme de deniers un esclave, &c. Mais l'ordonnance des substitutions de 1747 a modifié considérablement cette faculté,” and quotes the provision of the ordonnance.

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It follows that the ordonnance of 1747 instead of creating the right of substituting moveables, which was the law previous, only restricted it, and he mentions an *arrêt* pronounced in a case adjudicated upon the law anterior to the ordonnance of 1747, concerning a substitution of an interest in a plate glass manufactory, where the Court held that this was subject to substitution, and Merlin adds :

“ On voit par les détails de cette affaire qu'elle ne devait pas être et qu'elle n'a pas été décidée par les principes que l'ordonnance de 1747 a établies, ainsi rien à conclure de l'arrêt qui l'a jugée contre l'opinion adoptée par celui du 27 Août suivant. *Tout ce qu'on peut raisonnablement en inférer c'est qu'avant l'ordonnance de 1747, les meubles fructueux étaient susceptibles de substitution en nature.*” 10

*D'Aguesseau*, the author of the ordonnance of 1747, in the work entitled “ Questions sur les substitutions ” containing the report of all the Parliaments of France on the articles of the ordonnance, several of whom had accepted and registered the ordonnance of 1629 with modification, at page 16, declares on the question : “ *Si la disposition de l'art. CXXV de l'ordonnance de 1629 touchant la substitution de choses mobilières doit être abrégée dans le pays où elle a eu lieu jusqu'à présent ou si elle doit être étendue aux provinces où elle n'a pas été observée ?*” “ Cette question est du nombre de celles qui se décident souvent par le préjugé que chacun peut avoir, ou de la faveur des substitutions, ou des inconvénients qu'elles produisent. Il faut convenir cependant qu'il y a de très fortes raisons pour autoriser les substitutions fidéi-commissaires des choses mobilières, et de très solides aussi pour les proscrire ; c'est ce qui a donné lieu à des suffrages si opposés les uns aux autres, qu'on s'est trouvé presque partagé. ” 20

“ *D'un côté on a été frappé d'une disposition expresse d'une Ordonnance, qui n'a eu cependant aucune exécution depuis plus d'un siècle que dans le seul Parlement de Dijon, ce qu'on a regardé comme un témoignage que cette disposition n'a pas paru utile au bien de l'état.* ” 30

“ On a été encore plus frappé du suffrage de presque toutes les cours, n'ayant eu que les Parlements de Dijon, de Metz et de Bezancon, qui aient embrassé l'avis d'exclure les fidéi commis pour les choses mobilières ; et quoique M. Leuret et l'avocat du parlement d'Aix, qui a envoyé des mémoires, aient été de même avis, le suffrage de tant de cours a parvu devoir l'emporter.

“ On a d'ailleurs posé pour principe que tous les sujets du Roi devaient être égaux par rapport à leur souverain, qu'il devait les chérir tous également et ne pas exclure les uns d'un droit que l'on accordait aux autres. On a pensé qu'en bornant le fidéi commis aux immeubles, ce serait exclure la plus grande partie des sujets, qui n'ont que des effets mobiliers, de l'avantage de substituer leur biens ; que si de la considération des personnes on passait à celle des biens, il fallait convenir que les deux tiers, ou les trois quarts des biens du Royaume étaient en effets mobilières et que par la prohibition de substituer cette sorte de biens, ce serait borner tellement les substitutions qu'il vaudrait presque autant les détruire en leur entier.” 40

*C. Henrys*, tome 3ème. p. 546. “ Les ordonnances d’Orléans et de  
 “ Moulins n’ont rien statué sur cela les degrés par tête, mais l’ordonnance de  
 “ 1629 a décidé nettement cette question. Elle ordonne que dorénavant les  
 “ degrés de substitutions et *fidéi-commis*, soient comptés par têtes et non par  
 “ souches et générations, c’est-à-dire que chacun de ceux qui auront appré-  
 “ hendés et reçuilli le *fidéi-commis* fassent un degré, sinon que plusieurs d’eux  
 “ eussent succédés en concurrence comme une seule tête, auquel cas ne seront  
 “ compris que pour un seul degré. *Si cette ordonnance qui est très sage et très-*  
 “ *judicieuse dans toutes ses dispositions, avait été observée, la question serait*  
 10 “ *terminée ; mais la disgrâce de son auteur entraîna celle de la loi.* La question  
 “ étant donc entière, il faut l’examiner en peu de mots.

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2 *Ricard, Ed Bergier*, p. 247.—

“ Encore que par le titre de *singulis rebus per fidei-commissum relictis* aux  
 “ Institutes, l’on puisse substituer aux meubles particuliers, néanmoins en  
 “ France il n’y a que les immeubles dont on puisse interdire l’aliénation, ou  
 “ du moins les choses qui tiennent lieu d’immeubles, comme universalité de  
 “ meubles qui se règle par les mêmes dispositions ; c’est pourquoi l’on ne peut  
 “ pas substituer avec effet à un meuble particulier. Je crois que l’on peut  
 “ alléguer sur ce sujet l’article 125 de l’ordonnance de 1629, n’y ayant aucune  
 20 “ autre loi qui décide ce point. Cette ordonnance défend de substituer aux  
 “ choses mobilières si ce n’est pour pierres précieuses de grand prix, d’autant  
 “ que les pierreries ont toujours été élevées au-dessus de la condition des  
 “ meubles. Note b.—Depuis l’ordonnance des substitutions de 1747, les  
 “ meubles et effets mobiliers ne peuvent être substitués que pour être vendus,  
 “ et le prix employé au profit des appelés. Il y a seulement quelques effets  
 “ mobiliers que l’ordonnance permet de substituer en nature, savoir, les  
 “ bestiaux et les ustensiles servant à faire valoir les terres, et les meubles  
 “ servant à l’usage et ornement des chateaux ou maisons, lesquels peuvent être  
 “ chargés des mêmes substitutions que les biens, maisons ou chateaux qu’ils  
 30 “ garnissent et dont ils sont réputés un accessoire. Voici les articles de  
 “ l’ordonnance relatifs aux substitutions des meubles et effets ou l’on verra  
 “ la manière, les conditions et les modifications sous lesquelles elles sont  
 “ autorisées.

“ Les deniers comptants, meubles droits et effets mobiliers seront censés  
 “ compris dans la substitution, lorsqu’elle sera opposé à une des dispositions  
 “ universelle, ou faite par forme de quotité ; à moins qu’il n’en ait été ordonne  
 “ autrement par l’auteur de la substitution ; et il en sera fait emploi à  
 “ l’exception de ceux qui seront ci après marqués.”

Recueil gén. des anc. lois franc. *Isambert* vol. 16, p. 262 *Marillac*.  
 40 Janvier 1629, art. 125. Voulons aussi que les dits *fidéi-commis* ne puissent  
 avoir lieu pour le regard des choses mobilières, si ce n’est pour pierres  
 précieuses de fort grand prix. ni semblablement avoir lieu aux testaments des  
 personnes rustiques qui vrai semblablement n’entendent ni la nature, ni l’effet  
 des substitutions ni des *fidéi-commis*. Page 342 de la collection des lois  
 francaises. Cette ordonnance de 1629 n’a jamais été enregistrée au Parlement  
 de Paris, excepté une délibération sur le premier article et jusqu’au treizième,

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et les registres du Parlement constatent d'après Isambert " sur le tréizième, il " y sera substitué le 75ème de l'ordonnance de Moulins. *On ne trouve plus " depuis de traces de la délibération du Parlement sur l'ordonnance de 1629."*

10 *Larousse, Vo. Marillac, No. 1206.*

" Il (Marillac) fut appelé en 1626 à succéder à Aligre comme garde des " sceaux. Deux ans plus tard il publia une ordonnance dans laquelle il s'était " efforcé de présenter dans un ordre logique tous les règlements alors en " vigueur en y introduisant plusieurs améliorations utiles. Mais le Parlement " refusa d'enregistrer ce travail, qui fut tourné en ridicule sous le nom de Code " Michau du prénom de son auteur." 10

From all these authorities it follows that in France particularly within the Parliament of Paris substitution of moveables were always admitted, that no decision to the contrary can be found, that the ordonnance of 1629 was never regularly registered in the Parliament of Paris or any other than those of Dijon, Metz, and Besançon, that even the ordonnance of 1629 allowed substitutions of *pierres précieuses*; that it never was observed, but fell into dissuetude, and was never enforced.

Then our statute on wills must have removed this restriction if it had ever existed and it was the universal rule of law sanctioned by our Courts since, that moveables could be made, and were continually made subject to 20 substitution.

No one ever dreamt of any objection on this point. In 1860, when the codifiers were called upon to establish the principle of the law then governing Lower Canada, the eminent jurists who were entrusted with this duty by the Legislature of the then province of Canada as shown by the Consolidated Statutes of Lower Canada, were instructed by the Legislature as follows: Section 4.—"The Commissioners shall reduce into one Code these provisions " of the laws of Lower Canada which relate to civil matters and are of a " general and permanent character."

Section 6.—"In framing the said Codes the said Commissioners shall 30 " embody therein such provisions only as they hold to be then actually " in force, and they shall give the authorities on which they believe them to be " so; they may suggest such amendments as they think desirable, but shall " state such amendments separately and distinctly, with the reasons on which " they are founded." The codifiers reported as the law then existing and as having ever existed in Canada, the substance of the Article embodied in the Code, under Article 931 which declares moveable property to be subject to substitution, and the Commissioners referred to the French authorities on which they rely, and even referred to contrary expressions such as might be inferred from the *obiter dictum* of Sir Lafontaine in the case of *Blanchet and 40 Blanchet*.

After the promulgation of the Code, the Legislature of the Province of Quebec thought proper by Act 31 Vic. chap. 7, section 10 (1886), to avoid any difficulty to determine that the law as fixed by the codifiers, was the law of Lower Canada, as printed by the Queen's printer of the former

Province of Canada and to have been and to be in force as law in this Province. **RECORD.**

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11.—When any provisions of law are repealed and other provisions are substituted therefor the provisions repealed remain in operation until the provisions substituted come into operation under the repealing law. (So the law and the jurisprudence anterior to the Code, and the Code itself, recognise and decide that substitutions of moveables are perfectly legal.)

To contend that a Judge or a Court of Justice in Lower Canada would be justified in substituting their opinion to that of the Code after its sanction by the Legislature, and to overrule its provisions, is to say the least extraordinary.

The Legislature created the commission of codification as a supreme tribunal entrusted with full authority to establish the rules of law which then governed the Province, and which they were bound to investigate and determine as then applicable upon every question thereafter to be submitted to the Courts on any such matters. They were directed if they thought proper to suggest any alterations, and were specially ordered to enact them carefully as new law. They did so, and the Legislature confirmed their judgment, accepted and sanctioned some modifications of the then existing law.

In the present case, the commission of codification stands, and must be considered with respect to the definition of the law as the highest possible Court, as to the settlement of any principles which they declare to have been the law at that date.

If a contrary theory were admitted, we would have nothing but anarchy, and the most disastrous consequences would follow. The Code would have no authority whatever; the caprice of the Judges would replace its provisions, and would stand as the only Code in every instance, and deprive the community of every safeguard and protection.

It is impossible to conceive that such a doctrine could be adopted by this Court more than any other Court. Our judicial system is strictly limited to the application of the existing laws; the Courts have no mission whatever to encroach on the legislative authority, they cannot establish a new principle of law however opportune or necessary it would be. Their duties are carefully defined and limited to the bare interpretation and application of the law as it is.

It may be urged that in peculiar cases where ancient regulations established by law conflict with the interests of the community arising from new wants and exigencies, the Courts may by forced interpretation adopt apparently new rules and decisions, as the jurisprudence of England shows, but never did they assume to lay them down as new laws, abrogating or altering the essence of existing enactments.

In the case of substitution of moveables, we find incontrovertible affirmation by the Code that it was and is allowed and also sanctioned by the uniform jurisprudence of our country for centuries. We find that this state of things is to continue and be upheld in future as imperative; then there can be no motive for revolutionising and upsetting such a well established condition of

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things. The jurisprudence of France at the date of the Conquest, for centuries before, and down to the promulgation of the Code Napoleon, recognised as undoubted and unquestionable the right to substitute moveable property. Innumerable decisions during all this period in France have been rendered maintaining this right. Not one single authority can be found, or a decision to the contrary; and after our own Legislature has declared that every person can bequeath his property as he thinks proper without restriction or limitation, and under this provision and confirmed by the universal jurisprudence of France, it cannot be supposed that all this is the result of a delusion; that all the French authors and Courts were in error; that our own Act was misinterpreted by our Courts; that the codifiers blundered and ignored the law. <sup>10</sup>

It certainly cannot be contended that when the Code and the law anterior to it declare that moveable property without exception can be the subject of substitution, it can be objected to on the ground of its being contrary to public order.

All writers of any note during the seventeenth and eighteenth centuries in France assert that substitution of moveable property was always authorised by the Roman law and was accepted and sanctioned by the French law.

In face of such authorities, can it be pretended that the same rule did not prevail and was not introduced as part of the body of our laws with the French sovereignty in Canada. <sup>20</sup>

Moreover, in the case of *Simpson* and *The Montreal Bank*, decided before the Code and by the Article 297 of the Code, which is based on this decision, all the Courts and the Privy Council expressly established that bank stocks must be considered as recognised investments not to be disturbed by administrators except with the sanction of the Court, considering them in the light of *immeubles fictifs* and to be dealt with as such.

Admitting even the pretension that the law prohibited the substitution of moveables before the Code, it must be acknowledged that the law was changed <sup>30</sup> in 1866 by the Code. Whatever provisions of the will of the testator remained unexecuted at the date of the promulgation of the Code, must certainly be governed and subject to the provisions of the new law which can avail in such a case from 1866. No question can since arise as to the legality of the substitution including and applying to moveable property, particularly bank stocks, consequently in 1866 the will of the testator who died in 1860, ordering his executors who were to remain in possession of the entire estate, to manage, administer and invest his property during ten years without the interference of the legatees, and ordering the bank stock or moveables to be substituted and not to become the absolute property of the legatees before 1870, must be held <sup>40</sup> to have become effectual and subject to the new provision of law sanctioning substitution of Bank stock in 1871, when undoubtedly the rule of the Code, supposing it were new law, prevailed.

In the case of *Plenderleath* and *Christie, King* against *Tunstal* which went through all the Courts and confirmed by the Privy Council reported in 14 Lower Canada Jurist, p. 197, and in the Rev. Leg. 358 and 20 p. 49, it was held that a will made under the law anterior to the Act Geo. III., cap. 38 and



41 Geo. IV. which prohibited wills to adulterine bastards ceased to have any effect, by the subsequent enactments which allowed such bequests, and the latter, were held to apply to the anterior provisions of the will which were formerly prohibited by the then existing law, thereby settling the question that a subsequent law removing incapacities had full effect on wills anterior.

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*Third Proposition* :—The testator conferred upon his executors no power or authority to dispose of the investments made in bank stocks, and they could not be justified in doing so more particularly after the expiration of the term fixed by the testator for their office.

10 By the tenth clause during the term of 10 years only, the testator authorises the three executors to sell such parts of his real estate as are not hereinabove specially devised and which it would be advantageous to sell, the testator then devised after this term of ten years the whole of the residue of his estate real and personal to his five sons, and particularly the Bank stock subject to substitution in favour of their children and inalienable, untransferrable and as *legs d'aliments*, with power to the executors merely to hold, administer and manage the residue of his estate for the term of ten years, strictly limiting their authority to that period, and the power of alienation is moreover limited during that period only to such parts of his real estate as are not specially  
20 devised.

The power of the executors, extended beyond the year and the day fixed by law for a precise and well defined term of ten years only, is a private mandate which cannot be enlarged or presumed to exist after the term fixed for its exercise.

By this clause of the will the three trustees are appointed jointly for the sole purpose of managing realising and investing money (not already invested) in bank stock, mortgages or real estate.

This is the constitutional clause as to the powers of the trustees and their duties, it must govern and control all subsequent provisions which must be  
30 considered as explanatory or directory of this positive mandate.

The executors and trustees are bound to give up the residue of the trust to the legatees after ten years as then existing. Consequently it became at that date the absolute property of the legatees under substitution.

The executors had no power or authority to sell Bank stock which had become vested in the legatees.

The mere mention in the 13th clause, that in making the apportionment of the residue if necessary or advantageous to sell any part of the same, cannot be held to remove the limitation contained in the tenth clause which restricted the sale to real estate, and excluded investments already made, and upon the  
40 further condition that it was necessary, or at least advantageous for apportionment, and that only with the concurrence of two of the executors, one of them being William Molson.

As the period granted to the executors by the testator, and the powers of alienation or change of investment are formally expressed in the will, the executors must be held to have no more authority after the term fixed or the object accomplished than an agent whose powers are restricted to a given

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period and for a special object could be supposed invested with authority to act under similar circumstances.

## C. C.—Art. 905.

“ A testator may name one or more testamentary executors, or provide for the manner in which they shall be appointed ; he may also provide for their successive replacement.

“ Heirs or legatees may lawfully be appointed testamentary executors.

“ Creditors of the succession may be executors without forfeiting their claims.

“ Single women or widows may also be charged with the execution of wills.

“ The courts and judges cannot appoint nor replace testamentary executors except in the cases specified in article 924.

“ If there be no testamentary executors, and none have been appointed in the manner in which they may be, the execution of the will devolves entirely upon the heir or the legatee who receives the succession.”

*Id.* Art. 912.

“ If several testamentary executors have been appointed and some of them only, or even one of them alone, have accepted, they or he may act alone, unless the testator has otherwise ordained.

“ In like manner if several have accepted, but some or one only of them survive, or retain the office, they or he may act alone until the others are replaced in the cases admitting of it, unless the testator has expressed himself to the contrary.”

*Id.* Art. 913.

“ If there be several joint testamentary executors, with the same duties to perform, they have all equal powers and must act together, unless the testator has otherwise ordained.”

*Id.* Art. 918.

“ Testamentary executors, for the purposes of the execution of the will, are seized as legal depositaries of the moveable property of the succession, and may claim possession of it even against the heir or legatee.

“ This seizin lasts for a year and a day reckoning from the death of the testator, or from the time when the executor was no longer prevented from taking possession.

“ When his duties are at an end, the testamentary executor must render an account to the heir or legatee who receives the succession, and pay him over the balance remaining in his hands.”

*Id.* Art. 919.

“ He pays the debts and discharges the particular legacies with the consent of the heir or legatee or with the authorization of the Court. In the case of insufficiency of money for the execution of the will he may with the same

“ consent or with the same authorization, sell moveable property of the succession  
“ to the amount required.”

*Id.* Art. 921.

“ The testator may modify, restrict or extend the powers, the obligations  
“ and the seizin of the testamentary executor and the duration of his functions  
“ he may constitute the testamentary executor and administrator of his property  
“ in whole or in part, and may even give him the power to alienate it with or  
“ without the intervention of the heir or legatee, in the manner and for the  
“ purposes determined by himself.”

10 *Merlin*, Rep. Vo. Exécuteur testamentaire.

“ No. III.—Qu'est-ce en effet qu'un exécution testamentaire ? Rien autre  
“ chose qu'un mandat.”

“ No. VIII.—Le temps de l'exécution testamentaire est limité à l'an et jour  
“ à compter du jour de la mort du testateur, mais ce terme peut être prorogé  
“ par de justes causes, par exemple si les héritiers avaient contesté les legs, s'ils  
“ avaient empêché la vente des meubles, etc.”

*Gugy and Gilmour*, 1 Rev. de L. p. 169.

“ The administration of an executor is a mandate of a private character.”

*Pothier*, Traité des testaments. Chap. V., Sect. I., Art. I.

20 “ La charge d'exécuteur testamentaire n'est pas une charge publique, c'est  
“ un simple office d'ami, d'ou il résulte, 1o. que cette charge est volontaire, et  
“ que les personnes, que le testateur a nommées pour ses exécuteurs testamen-  
“ taires, ne peuvent être forcées à accepter cette charge.”

Art. II. “ L'exécuteur peut vendre à sa requête les meubles, mais il doit  
“ faire cette vente du consentement de l'héritier, et si l'héritier n'y consent pas,  
“ il doit l'assigner pour faire ordonner cette vente par le juge.”

30 “ Quoique la Coutume de Paris le saisisse indéfiniment de tous les meubles,  
“ néanmoins le juge ne lui doit permettre d'en vendre que jusqu'à concurrence  
“ de la somme nécessaire pour l'accomplissement du testament, *non potest*  
“ *vendere sine hærede, et usque ad concurrentiam tantum. Mol. dict. loco.*”

Art. III. “ La première obligation de l'exécuteur testamentaire, qui a  
“ accepté cette charge, est de faire inventaire des effets de la succession, ce  
“ n'est qu'un faisant cet inventaire qu'il est saisi des biens de la succession, il ne  
“ doit point s'immiscer auparavant, à moins que ce ne soit pour choses urgentes,  
“ comme par exemple, ce qui concerne les obsèques de défunt.”

Art. IV. “ Les Coutumes ont restreint l'exécution testamentaire au temps  
“ d'un an.

40 “ Mais lorsque l'exécuteur a été saisi des biens de la succession ou a pu  
“ l'être, l'an court ; et après l'an révolu l'exécuteur ne peut plus demeurer en  
“ possession, quoique le testament n'ait été ou n'ai pu encore être exécuté.”

In face of the following words of the testator, it is impossible to raise the question as to the absolute cessation of power in the executors and the complete vesting of the residue in the devisees after the 10 years : the words are as follows :

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“ I further will and direct that at the expiration of the term hereinbefore *limited*  
 “ *for the continuance of the said trusts*, the said residue of my estate, real and  
 “ *personal as the same shall subsist*, shall under and subject to the conditions  
 “ and limitations hereinafter expressed, fall to and become and be for their  
 “ respective lives only, and in equal shares the property of my said five sons,  
 “ or if any of them shall have died before the expiration of the said term, the  
 “ share of the one so dying or who shall have died, shall become and be for ever  
 “ the property of his lawful issue.” The power of apportionment began only  
 after the expiration of the trust as the terms of the will expressly say : “ After  
 “ the expiration of the term for the continuance of the trust, the trustees shall 10  
 “ apportion and distribute the residue after the rendering of an account, in  
 “ favour of the several heirs.” It cannot be contended that any power of sale  
 could exist and that the heirs were not vested with the absolute property of the  
 residue subject to the substitution, after the expiration of the trust. The  
 apportionment, by the very terms of the will, could be effected only after the  
 trust had ended.

*Rolland de Villargue*. Vo. “ Exécuteur testamentaire,” No. 116. “ On ne  
 rend compte d’un mandat, que lorsqu’il a cessé.”

Can it be contended that there was any necessity for or advantage in selling  
 any part of the said shares for the purposes of apportionment and divisions of 20  
 the residue, and was the transfer as made, for apportionment ?

The facts of the case conclusively demonstrate that out of the 3,200 of  
 Bank stock belonging to the estate, the five sons were each entitled to and  
 became vested with 640 shares, which consequently, irrespective of the fact that  
 this investment was already made, and any interference whatever prohibited by  
 the testator, there could be no reason or pretence to sell any portion of such  
 stock for the purpose of apportionment, and no excuse of the advantage of sale  
 could be proffered, as the executors themselves left the 640 shares to each of the  
 three other sons as a proper investment and safely protected it according to the 30  
 instructions of the testator, against all possible alienation and subject to the  
 substitution. Is not the violation of their duty glaring when they allot the exact  
 640 shares to three heirs as substituted property, and give the exact proceeds  
 of the 640 shares to Alexander Molson, which amount they were bound imme-  
 diately to invest in 640 shares of the same Bank stock subject to substitution  
 and to the conditions of the will as to the *insaisissabilité* and *legs d’aliments*, or  
 on real estate or equivalent securities.

The only difference in the operation and transfer to Alexander and John  
 Molson, consists in a direct violation of the will of the testator, in taking from  
 the substitution and removing the safe-guard with which the testator had  
 surrounded these shares for his children and grand-children, and to put the 40  
 proceeds and their exact value in the hands of Alexander Molson as his own  
 absolute property in other words, it was a direct and open spoliation of the  
 estate in abuse of the trust.

It certainly cannot be contended for a moment that this was within their  
 power of apportionment, or can it be claimed to be according to the wish of the  
 testator, or to be necessary for apportionment or advantageous to the estate,

more particularly when the testator says that after the expiration of the term limited for the continuance of the trust, they shall apportion the residue, taking care in such apportionment and distribution to provide as far as possible against risk of the capital of any of the shares being lost in the hands of any of the holders thereof under substitution.

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10 Taking for admitted that the executors had power to dispose of Bank stock for the purpose of apportionment, to enable them to make a full and final distribution and division amongst the five legatees which was the sole condition in the intention of the testator to cause them to depart from his positive order not to disturb his investments after surrounding them with all imaginable guarantee against alienation, something more than a simple inference is required to suppress or alter these imperative prescriptions. This power is in no manner extended beyond the existence of the trust absolutely limited to the ten years and restricted by the constitutional clause appointing them to the sale of real estate. The apportionment does not necessarily imply an extension of this trust. If the sale of a part of the residue was necessary for such division they were bound to exercise it before the apportionment and during the existence of the trust. The apportionment was not a continuation of it but its closing surrender and final settlement.

20 If after the expiration of the trust it was found that the executors had neglected to adopt the necessary proceedings to secure a proper division of the estate to make the allotment, it does not follow that their powers of trustees revived in the absence of any expression of the testator to that effect; on the contrary as he positively declares that after the ten years fixed, which is "*the term limited for the continuance of the said trusts,*" the residue of his estate "*as the same shall subsist,*" becomes the property of his five sons subject to the conditions and limitations expressed.

30 Therefore if the allotment could not take place after the termination of the trust without the sale of some part of the residue, and when that residue had vested on the five sons, the partition had to be made between them as proprietors subject to substitution, and the sale had to be made as of substituted property with all the formalities prescribed by law.

*Troplong*, du Mandat, No. 760.

" Il est inutile de dire que la consommation de l'affaire met fin au mandat et qu'il ne reste plus qu'à rendre compte. *Per acto negocio, finitur officium, functus est mandatarius officio.* On a vu au No. 565 ci-dessus, un exemple remarquable de cette conclusion du mandat. On en trouvera un autre au No. 825.

761.—" L'expiration du temps précis pendant lequel le mandat devait durer met également fin aux pouvoirs du mandataire. Si je vous ai donné mandat pour gérer mes affaires pendant mon absence, votre mandat cesse quand je suis revenu de mon voyage. Ces vérités sont si élémentaires qu'il suffit de les mentionner.

762.—" Lorsque le mandat est expiré, les actes faits par la mandataire ne lient pas le mandat. Telle est la règle générale."

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*Pothier*, Mandat, No. 119.

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Our Code uses the same terms. Art. 1755 and 1719.

The nature and character as well as the legal value of this transaction was conclusively fixed by the Privy Council, in the case of *Carter v. Molson* wherein that Court, called to revise the judgment of our Court of Appeal which had declared null and void a sale of property by these same trustees under the authority of the same will, and after a specious and ingenious formality of an auction sale resorted to by them to give it a lawful aspect and valid sanction, the Privy Council expressed itself in the following terms:—

“The auction sale was not resorted to for the purpose of selling and 10  
“dividing the proceeds, the only purpose for which a sale was authorized by  
“the will, but for the purpose of ascertaining the value of the subjects exposed  
“in order to their partition among three of the five residuary legatees.  
“Accordingly these legatees after the auction sale at which Alexander Molson  
“was not a buyer, agreed to divide the subjects which had been exposed, not  
“according to the prices at which they had been knocked down but according  
“to an estimate based on an average of these prices. Upon that footing the  
“St. James Street property was allotted to Alexander Molson as part of  
“his share; and there appears to be no ground whatever for supposing that  
“the trustees of the will thereafter sold to him his allotted portion for the 20  
“amount of the estimate *even if such a sale had been within their power which it*  
“*clearly was not.*”

“The deed of the 15 June 1871 purports to be a conveyance of the  
“property in question to Alexander Molson in pursuance of a contract by  
“which the trustees of his father’s will had sold it to him for the amount  
“at which its value was estimated for the purpose of partition as already  
“explained. In point of fact, the deed appears to have been framed by the  
“grantors in flagrant disregard of their duty as trustees and to have been a  
“colourable and not very creditable devise for giving Alexander Molson a  
“larger interest in the property than he was entitled to, and for defeating the 30  
“intentions of the testator with respect to substitutions and the insaisissability  
“of his sons’ usufruct.”

Referring to the deed of the 15 June 1871, vesting in Alexander Molson his share in the residue, their lordships say:—

“This deed appears to indicate very plainly that the St. James Street  
“property had not yet been sold for the purpose of dividing the price but had  
“been allotted to Alexander Molson as part of the corpus of his share of  
“residue. At all events the terms of that deed and its relative schedules appear  
“to their lordships to be quite sufficient to notify to any person dealing with  
“Alexander Molson on the faith of the deed dated 15 June 1871, and registered 40  
“11th June 1872, that the transaction which it professes to embody was in  
“reality either a legal partition or an illegal sale.”

In the same case on the appeal of Alexander Molson relating to the attachment of 148 shares of Bank stock, the Court held:—

“The sole ground upon which these dividends are said to be placéd beyond  
“the diligence of his creditors is that the 148 shares either are or represent

“ part of the 640 shares of the stock of Molsons Bank which were transferred  
 “ to Alexander Molson as an integral portion of the fifth share of residue  
 “ settled upon him and his wife and family by his father’s will. Their Lordships  
 “ see no reason to differ from the law laid down by C. J. Dorion to the effect  
 “ that these dividends would be protected from arrestment by the 18th article  
 “ of John Molson’s will, if it were proved to be the fact that the 148 shares  
 “ form part of the 640 shares originally transferred to Alexander Molson by the  
 “ executors of the will or were purchased with the proceeds of these original  
 “ shares.”

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10 The Privy Council by their judgment have decided :—

1. That the executors had no power to sell real estate, except for the purpose of a necessary and a *bonâ fide* partition of the proceeds; that a process however ingenious of an alleged sale by auction after which the divisor became the possessor of the identical property, was null, and a flagrant disregard of their duty and a colourable and not a very creditable device for giving Alexander Molson a larger interest in the estate than he was entitled to and for defeating the intentions of the testator with respect to substitution and the *insaisissabilité* of his son’s usufruct. In other words the Court declares it to be a fraud.

20 2. That it was in reality a partition and no sale; the property remaining affected with all the conditions attached to it by the testator.

3. The Court also held that the transfer of the 640 shares were subject to the same rule and as part of his fifth share of residue settled upon him and his wife, and family, by his father’s will which were insaisissable and consequently inalienable.

If the authority of the highest Court in our judicial system is to be respected and accepted as a finality in any question of law, there seems in the present case nothing to discuss. It was sufficient to call the attention of the Court to apply the decision.

30 To establish the difference of authority and powers between the executors under the English system and ours, it is sufficient to refer to our Code.

Art. 919.—“The testamentary executor must cause an inventory to be  
 “ made after notifying the heirs, legatees, and other persons interested to be  
 “ present. He may, however, perform immediately all acts of a conservatory  
 “ nature, or which require dispatch.

“ He pays the debts and discharges the particular legacies with the consent  
 “ of the heir or legatee or with the authorisation of the Court.

40 “ In the case of insufficiency of moneys for the execution of the will, he  
 “ may with the same consent or with the same authorisation sell moveable  
 “ property of the succession to the amount required.”

Under this provision no executor can sell moveable property belonging to the estate only with the consent of the heir or legatee or with the authorization of the Court.

Consequently when the trust was terminated and the property vested in the heirs, the executors could not sell property so vested except with the consent of the legatees and the authorization of the Court; it was then

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substituted property, and the only party who could legally represent the substitutes and whose sanction was necessary for any sale or conveyance, according to Art. 945, was the curator to the substitution, and the executors were bound to have him appointed, and no transfer could be valid without his participation and the authorization of the Court, more particularly with respect to Bank stock, held by our law to be *immeubles fictifs*.

The transfer of the 640 shares was made in total disregard of these essential conditions.

Now taking the 16th article of the will the only expression which the respondents can invoke as superseding all the previous imperative directions of the testator, the appellants submit that this article grants no power of sale to the executors except as part of the residue and unquestionably substituted, and this power of sale further limited for the purpose of apportioning and dividing the proceeds equally amongst the five legatees.

“That as soon as it may be practicable after the expiration of the term hereinbefore limited for the continuance of the said trust the said trustees shall apportion and distribute the said residue.

“And if in making the apportionment and division of the said residue, the said trustees shall deem it necessary or advantageous to sell any part of the said residue, and in lieu thereof to apportion and divide the net proceeds of the sale thereof it shall be competent for them to do so, anything hereinbefore to the contrary notwithstanding.”

The first duty of the executors under this clause is to apportion the residue and the power of sale is given, if deemed necessary, for apportionment and division, and in lieu thereof to divide the net proceeds amongst the five sons. This power cannot be claimed to exist after the apportionment and division of the residue.

The appointment and division was made and fully completed and the account rendered on the 25th of March, 1871, before Phillips, N.P.

On the 27th of March, two days after this account, the respective shares, the apportionment of immoveables and Bank stock are carefully assigned over to two of the five legatees, George and J. D. Molson each receiving his 640 shares of stock besides his share in real estate. The division must therefore be held completed and there could be no further division to be made between the five legatees, and it is evident that there was and could be no further apportionment required, by the bare fact that the transfer of the remaining shares were only suspended, each of the other three sons receiving in their lot the exact proportion of 640 shares together with their proportion of real estate, without any sale or distribution of proceeds, and the identical 640 shares were also directly conveyed to Alexander Molson on the 5th April without condition.

There was therefore no sale made of any part of the residue for the purpose of dividing the net proceeds, and there could be none after the 27th March.

A partition or division amongst heirs is a simultaneous and joint act amongst all the heirs or legatees.

After this allotment and transfer to two of the heirs on the 27th of March, and when the executors must have had the proportion of stock and real estate



ready and made out in equal proportions for the other three sons as proven by the subsequent assignment by them executed with all the conditions imposed by the testator, their power of sale had lapsed and they had no further authority but to convey the respective proportions of the residue as then settled; notwithstanding, six days afterwards, on the fifth of April, one of the executors conveys the 640 shares to Alexander Molson personally, free from any condition or substitution, and because the executors kept in abeyance the transfer of the respective proportion of the residue fixed and settled for the other legatees conveying to them their exact part in the residue, can it be now  
10 contended that this conveyance to Alexander Molson was not a conveyance of his share in the residue and was not subject to all the conditions of the will. The best proof that this transfer to Alexander Molson individually, was not for the purpose of division is the fact that after transferring them the executors kept the exact proceeds, and delivered them as part of the residue and his lot.

*Fourth Proposition.*—Can the law, even for the purpose of necessity or advantage, sanction an alleged sale made of invested shares by one of the executors to the other, and legally deliver to him the net proceeds of such sale without limitation or condition?

20 On this point the Appellants feel it is almost derogatory to the dignity due a Court of Justice to dwell at any length in the examination of the question beyond its enunciation as an incontrovertible principle of universal law that no administrator can in any manner acquire or have any part of the trust in his charge transferred to him personally.

Art. 1484, C. C.—“The following cannot become buyers either by themselves or by parties interposed, that is to say:

“Tutors or curators of the property of those over whom they are appointed  
“except in sales by judicial authority;

“Agents of the property which they are charged with the sale of;

30 “Administrators or trustees of the property in their charge, whether of  
“public bodies or of private persons;

“Public officers of national property, the sale of which is made through  
“their ministry;

“The incapacity declared in this article cannot be set up by the buyer;  
“it exists only in favour of the owner and others having an interest in the  
“thing sold.”

In this case, moreover, the transfer or pretended sale is made by one of the executors alone in direct violation of the injunction of the testator's will which forbids any transfer or sale except by two executors.

40 The Chief Justice, the Honourable Sir A. A. Dorion, in his judgment rendered in the Carter and Molson case, clearly establishes this principle as follows:—“This power to sell could only apply to *bonâ fide* sales made in the  
“interest of the estate, and with a view to promote the intention of the testator,  
“and the Appellant (Alexander Molson) as one of the trustees was not  
“authorised to join another trustee to sell to himself individually any portion

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“ of the property bequeathed to him with the avowed object of defeating the provisions of the will of the testator.

“ The sale was therefore made by one trustee alone to another trustee, contrary to the provisions of the will which required the concurrence of two at least of the trustees as regards the sale of real estate. It was also against the express provisions of Article 1484 of the Civil Code, by which administrators and trustees are declared incapable of purchasing the property in their charge.”

Our law holds that bank stock must be considered and dealt with, not as ordinary moveables, but as immoveables, *immeubles fictifs*, which cannot be disposed of by administrators without the authorization of the Court, and the rules declaring an administrator incapable of purchasing any kind of property held by him in trust, must certainly apply to bank shares. Therefore the alleged sale of the bank stock in question by one executor to another, must be considered as absolutely null.

At the date of the alleged transfer made by one trustee to the other of the 640 shares, they were then the absolute property of the institute Alexander Molson and subject to the substitution and to all the other conditions of inalienability and insaisissabilité, and settled by the testator as aliments in favour of the said Alexander Molson and his children.

The executors therefore could not, and had no power to take these shares and convey them to any party whatever except upon judicial authority, and far less to transfer them to the institute Alexander Molson who was already bound to hold these shares as belonging to the substitution under prohibition to sell or dispose of them, and under an imperative injunction to keep the same as aliments for himself and his children.

The residue of the estate which was all invested and consisted in real estate and bank stock could in no manner be disposed of or aliened in any manner whatsoever by reason of the prohibition contained in the 18th clause which declared the same to be absolutely *insaisissable, legs d'aliments* and inalienable. The terms of the 18th clause are as follows:—

“ It is my further express will and I hereby specially direct and ordain as an essential condition of my bequests in favour of my five sons and of their widows respectively, that all the estate, interest and property, whether by way of usufruct, annuity or otherwise and every part and portion thereof which my said sons respectively, or their widows respectively, shall, or may in any wise take or receive *or be entitled to take or receive under this my will*, and also all interest or revenues or income in any wise to arise therefrom, shall be and remain for ever exempt from all liability for the debts present and future, of them or any of them, and shall be absolutely insaisissable for any such debts, or any other cause whatsoever, and shall be held and taken as being to all intents and purposes *legs d'aliments* by me granted in favour of them, and each of them, and shall moreover be insusceptible of being by them, any or either of them assigned, or otherwise aliened for any purpose or cause whatsoever.”

By this article of the will, the testator positively orders, that whatever

property any of his five sons shall receive or shall be entitled to receive will be inalienable insaisissable, &c.

It will not be contended that Alexander Molson was not entitled by the will to these 640 shares, consequently, they were from the date of the death of the testator inalienable and insaisissable.

Our law, which is entirely different and the opposite of the French law, sanctions in most positive terms the power to render property moveable or immoveable, inalienable or untransferable. The principle of the present French law is that property cannot be limited as to transmission or alienation, this  
 10 rule is properly expressed in Aubry and Rau, Vol. 2, page 175, 2: “La défense  
 “ d’aliéner imposée par le donateur ou testateur au donataire ou légataire n’est  
 “ point en général efficace, la faculté d’aliéner est d’ordre public, le propriétaire  
 “ ne peut en principe y renoncer par convention.” With us on the contrary, the most stringent conditions as to the transmission of property, moveable or immoveable, are allowed and sanctioned and the Courts are bound to see to their execution and maintenance.

Art. 831, Code.—“Every person of full age and sound intellect, and  
 “ capable of alienating his property, may dispose of it freely by will, without  
 “ distinction as to its origin or nature, either in favour of his consort, or of  
 20 “ one or more of his children, or of any other person capable of acquiring  
 “ and possessing and without reserve, restriction or limitation; saving the  
 “ prohibitions or restriction and causes of nullity mentioned in this Code,  
 “ and all dispositions and conditions contrary to public order and good  
 “ morals.”

Pothier, P. C., No. 501.—“Il est permis au donateur ou testateur d’apposer  
 “ telle condition que bon lui semble à sa libéralité.”

Art. 968.—“The prohibition to alienate property contained in a deed,  
 “ may in certain cases, be connected with a substitution, or may even con-  
 “ stitute one. It may also be made for other motives than that of substitution.  
 30 “ It may be stated in express terms, or may result from the conditions and  
 “ circumstances of the act. It includes the prohibition to hypothecate. In  
 “ gifts *inter vivos* the undertaking by the donee not to alienate has the same  
 “ effects as the prohibition by the donor.”

Art. 969.—“The cause or consideration of the prohibition to alienate may  
 “ be in the interest either of the party disposing or of the party receiving, or it  
 “ may be that of the substitution or of third parties.”

Art. 975.—“If the prohibition to alienate be made in favour of the persons  
 “ designated, or who may be ascertained, and who are to receive the property  
 “ after the donee, the heir or the legatee, a substitution is created in favour of  
 40 “ such persons, although it be not in express terms.”

According to these articles, the prohibition *d’aliéner* can subsist without a substitution, and may be in the interest of the children of the donee for their education.

Art. 1486.—“Everything may be sold which is not excluded from being an  
 “ object of commerce by its nature or destination or by special provision of the  
 “ law.”

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The law therefore recognises that what has been declared inalienable cannot be the object of a sale.

*Fifth proposition.*—Could the appointment of Joseph D. Molson be ignored or disregarded by the other executors?

By the 10th clause of the will the testator devises the whole of his estate to three executors, amongst them his wife, and to the three he entrusts the management of the residue thereof, and by the last clause he provides that his wife may appoint a new trustee who shall after her death be vested with all the estate jointly with the others as if originally appointed by him.

Joseph D. Molson was regularly appointed according to the directions of the testator, and had the same authority as any of the surviving trustees. It is in evidence that the two other trustees, more particularly William Molson, refused to allow him any participation in the management or direction of the estate, and entirely disregarded and ignored him, notwithstanding the testator in the 10th clause of the will had invested the three executors appointed by him, and the one who should be appointed in lieu of his wife, as the only parties jointly and severally entrusted with the administration of the estate and insisting that the concurrence of two trustees would be absolutely required in all questions touching the sale and disposition of any part of his estate, and that his brother William should be one.

The authority therefore of John Dinham Molson after his appointment was equal to that of any other two trustees, and they could not ignore or disregard him, and he was bound to be a party to any transaction in which any of the other trustees could have conflicting interests with that of the estate.

That they refused to acknowledge him or allow him any participation in the administration of the estate, is proved beyond a doubt. Even in the absence of any proof to that effect, after they had been duly notified of the appointment it would be incumbent upon them to prove that he had been called upon to act and had refused to do so.

*Sixth proposition.*—Can the Bank plead ignorance of the provisions of the will, and are they free from responsibility after allowing the stock to be so transferred by the executors without taking notice of the conditions imposed by the testator as to the transfer of the stock belonging to the estate. If, as the Appellants contend, the executors under this will, according to our law, are simply mandatories, agents and administrators, and as such administrators for a definite and specific purpose have only limited authority, it is useless to discuss the matter further. The simple statement of the facts would be conclusive as to the liability of the Bank. It cannot certainly be asserted that if a party claiming from a bank a deposit of any trifling amount as agent of the depositary, cannot legally withdraw the money so as to exonerate the Bank, if the power of attorney or mandate is defective or lapsed, or is conditional, and that the bank remains liable to the depositor after payment under such defective power, can it be urged that the capital stock which has been secured by any shareholder can be conveyed to a third party under an expired or defective power of attorney without responsibility by the Bank?

Unless the Bank can show that the real owner or his legal representatives have disposed of his stock, it must be held responsible to them.

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In the case of *Simpson and The Bank of Montreal*, 10 L. C. R., page 225, held :—

(1.) “ That by law, the power of a tutor over the property of a minor, does not extend beyond that of a simple administrator. That the tutor has no right without sufficient authorization is obtained to sell, ‘les immeubles réels ou fictifs ou réputés tels ou choses précieuses.’ ”

10 “ That shares in the Bank of Montreal must be held to be such ‘immeubles fictifs’ or ‘choses précieuses,’ and that the sale and transfer thereof by a tutor *en déconfiture*, without any formality or authorization, whereby the proceeds were wholly lost, is an absolute nullity, so far as the minor is concerned.

“ That in an action by the minor against the Bank, such minor is entitled to recover all the dividends accrued from the date of the transfers, although such dividends had been paid previously by the Bank to the transferees.”

The Court in this case defined the character of Bank stocks as distinct from ordinary moveable property.

20 “ Nos actions de Banque sont meubles, il est vrai, mais ce ne sont pas des meubles réels, ce ne sont pas des créances ordinaires exigibles ; le capital souscrit est placé là à perpétuité, pour en obtenir seulement l'intérêt ou profit plus fixe encore que le capital d'une rente constituée, le capital n'est jamais exigible par l'actionnaire et la corporation qui en est dépositaire ne peut jamais exiger qu'on en reçoive le remboursement. Pour en opérer la conversion, le tuteur doit faire un transport, une vente du capital investi, il lui faut provoquer par l'entremise d'un tiers, et solliciter de lui le rachat de cette rente non rachetable de sa nature. On sait que parmi nous des fortunes considérables sont représentées par cette seule espèce de propriété.

30 “ Si des parents ont jugé à propos de faire eux-même la destination de leurs biens et de les convertir en actions de Banque, comment le tuteur s'arrogerait-il seul, de sa propre autorité, le droit de changer la destination faite par le père de famille dans l'intérêt de ses enfants? S'il ne peut vendre une rente constituée, pourquoi lui serait-il permis de vendre des actions de Banque? ‘*Ubi eadem ratio ibi idem jus.*’ Le moins que l'on pourrait exiger pour une disposition aussi importante, concernant quelquefois toute la fortune du pupille, serait bien l'avis des parents et l'autorité du juge. Dans ce cas même il lui faudrait en démontrer la nécessité et justifier cet acte par l'intérêt de son pupille ‘*Nam tutor in re pupilli domine loco habetur*

40 “ *cum tutelam administrat non cum pupillum spoliat.*”

3 Redfield, p. 182. Some of the early English cases treated shares in joint stock incorporated companies as real estate.

If it is admitted that any person providing for the future of his children can invest his means for their support in the acquisition of Bank stock, it must as a consequence be equally well established that such an investment must

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remain secure to him and to his heirs at law unless he has by will directed upon what conditions the same shall be disposed of, as the original owner.

In the present case the testator had carefully invested a large proportion of his estate in Bank stock in an institution founded by himself of which he was vice-president and every one of his expressions in the will goes to show that he intended that this investment should be respected, and ordered his executors to carefully guard and protect it against any possibility of alienation, so as not to be removed from its destination as aliments for each of his five sons respectively and their children, forbidding his executors to disturb any of this property except for absolute necessity or advantage to his estate, and then strictly keeping in view his injunction to provide against any risk, and against the possibility of their being used for any other purpose, and he further directs that whenever such reasons would arise that such alienation should be protected with the same guarantees. 10

The will appointed three trustees for the management of the estate, and of this fact the Bank had had full notice, also that the property was substituted. Two of the trustees alone were parties to the transfer, one who pretended to sell and the other who pretended to purchase.

The will required the concurrence of two trustees to the disposal of any portion of the estate; this also could not be ignored by the Bank. The law declares null any sale made by one administrator to another; this principle the Bank was bound to know. If the property was substituted, the Bank must be held to be well aware of the fact that no substituted property could be conveyed without the concurrence of two of the trustees jointly with the assent and intervention of the curator of the substitution to protect the interests of the substitutes which were totally ignored in this transaction. 20

The Bank was bound to inquire why two of the trustees, or virtually only one, was a party to this transfer, when they had due notice that the three executors appointed by the will were jointly entrusted with the management of the estate, and that Joseph Dinham Molson was regularly appointed. Further the Bank knew that the powers of the executors could not exist beyond the period of ten years from the date of the testator's decease; that the powers of the executors were only equivalent to and did not confer more power or authority than the ordinary mandate or power of attorney. That having allowed this transfer in direct violation of this imperative direction of the testator, the alienation or the consent by the Bank to the disposal of this stock can have no further legal effect than if an attorney to whom a stockholder had granted power of attorney to dispose of his stock under such restrictions and conditions, had disposed of it in total disregard of the authority conferred on him. 30 40

It is of the highest importance to keep in view the distinction which exists and the difference between our law and the English law with respect to executors. In our system the executor is nothing more than a mere minister or agent of the testator. His powers in the absence of any qualification imposed by the will, are limited in duration to the year and the day, and that for the mere purpose of paying the debts and the legacies without any seizin

of the estate except of the moveables for collecting the claims and settling the estate.

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Our law acknowledges no power whatever to alienate moveables or disturb investments. By the jurisprudence their authority can be extended beyond the period fixed by law only when they could not enter upon their duties by reason of contestation of the will by the heirs which prevented them from fulfilling their duty; but when the testator extends this power, such an extent must be fully and precisely defined and regulated by the express terms of the will. The executorship is not a necessary legal function which cannot be  
10 dispensed with. On the contrary, under the English system the executor is a necessary legal functionary, indispensable for the carrying out of any will or administration of every estate whether testamentary or intestate, and the powers of such executor are absolute as to the moveable property. His authority is unrestricted; no one has a right to question it whether the moveable property or any portion of it has been specifically devised by the testator, or is vested in the heirs, the executor supersedes every one in the control of the moveable property without limit or exception.

It is therefore self-evident that the English authorities can have no bearing whatever, or application to the question of the powers of the executor under  
20 our law. It may be a good answer on the part of the Bank under the English system to the claim made for the recovery of stock or its equivalent by the heirs and representatives of the deceased party to show that the transfer of it was made by the executor invested with such authority, because the executor is the personal and undisputed representative of the deceased as to the disposal of Bank stock, but it cannot avail under our system which does not recognize the executor as the personal representative of the deceased, but merely as his special mandatory or attorney with no more authority than the testator gives, and subject to all the restrictions which the latter may think proper to impose, and vested with such authority only as he may determine, beyond which he  
30 has or can claim no power whatever. With us the executor has certainly not the same powers as the tutor over the property of his ward, for the tutor is bound to sell all the moveable property and invest it without the intervention of any party, whilst the executor is as a general rule authorized to sell only such ordinary moveables as are required, and this with the consent of the heirs or legatees or the authorization of the Court, to pay the debts and the special legacies. When this is accomplished his authority ends, and our law and our Courts universally hold that a tutor invested with greater powers has no right to dispose of Bank stock because it is considered as an *immeuble fictif*. It is therefore irrational to quote English authorities on this point, which can  
40 have no application whatever, and of which our Courts are bound to take no notice.

Notwithstanding this essential difference English authorities are found which would go to show that transfer of securities or bank stock by executors under circumstances such as disclosed in the present case would be considered as illegal, and afford no protection to the party obtaining or allowing it.

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*Redfield*, Law of Wills. Vol. 3, p. 113 :

“ The executor is *universi juris hæres*.”

*Id.* p. 227. “ 1. There is no proposition in the law better established than that the personal representative may sell any or all the personal estate of the deceased. This is briefly but fully described by Lord Mansfield. *What v. Booth*, 4 T. R. 625.

“ 2. It has been made a question whether the personal representative can so dispose of chattels specifically bequeathed as to convey good title against the legatee where there are no debts against the estate requiring the sale. But some of the more recent cases than *Humble v. Bell* seem to recognize the right of the executor so to deal with such property notwithstanding the reversal of that case. 10

1 *Williams* Executors 840, 2 *Sugden* on Vendors, *Humble v. Bell*, 2 Vernon, 444, which in the Court of Chancery was decided in favour of the right of the executor to mortgage a term specially bequeathed and that the legatee should redeem or be foreclosed; but the decree was reversed in the House of Lords.

“ *Id.* p. 228.—But it has been determined upon great consideration that where a note or other security is given to two or more executors jointly, who hold the same under special trusts, that the legal title is in all the executors the same as if it had been given to them as trustees under an ordinary trust and the concurrence of all the payees or trustees is necessary in order to transfer the legal title of such note or security to a purchaser.” 20

P. 230.—In a case where one executor and trustee without the privity of the others had sold a bond and misapplied the proceeds :—“ It was held not to be a valid sale and transfer of the legal title, and that the purchaser could only claim to be protected in equity so far as the money or security given by him to the trustees of whom he purchased could have shown to have come to the use or in aid of the purposes of the trust.”

P. 621.—“ If the trustee has no power of sale, the purchaser will acquire no title unless he show that the purchase money has been applied to the purposes of the trust. It is this which marks the true distinction between the cases where the purchaser is bound to see to the application of the purchase money and where he is not. For if the trustee has no power of sale, any transfer by him is wholly inoperative and the trust will attach to the trust property in the hands of the vendee the same as in the hands of the trustee, until it appears that the money paid by the vendee to the full value of the trust property has been applied to the purposes of the trust.” 30

Admitting that the charter Vict. 18, chap. 203 (1855) should govern this case, the Plaintiffs submit that nothing can be found in Section 33 or following to exonerate the Bank from the liability to prove that the stock was properly transferred or alienated. This charter only allows the Bank for its own protection to require the proof of transmission of shares by declaration duly authenticated and without such transmission no party claiming it is entitled to receive any profits of the shares of the Bank, the charter also allows the 40



directors to require additional proof in support of the ownership by the claimant of the shares of the Bank, the Bank is further authorized to make a petition to the Court for an adjudication to transmit such shares to the party legally entitled to them.

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Assuredly these provisions cannot be invoked by the Bank as an exemption from ascertaining to whom such shares could be transferred, and what powers or authority the executors had to effect a transfer of any of them. It is only after such declaration duly executed that the Bank is exempt to see to the execution of the trust. The duty of the Bank was and is to see that the  
 10 property of shares after the death of the owner be properly transferred to the name of the legitimate owners with such legal conditions as the testator may have affixed to them, for example, as in this case, the Bank was bound to see that the shares should be registered in the name of the party to whom the testator bequeathed them. 1st. To the executors during the period of the trust with reference to the will. 2nd. After the trust (ten years) the Bank was bound to see that the shares were transferred to the respective legatees for their life-time only and subject to the conditions of the will. The Bank cannot plead that they had no notice that such shares were substituted property; this is not seeing to the execution of the trust but seeing to the proper registration  
 20 of the trust. It certainly cannot be contended that the Bank would not be responsible in this case or in any case when the stock had been transmitted to the executors under a will, declaring that they had no power to transfer the same except within a definite period to parties particularly designated and for a special purpose. Here the owner of the stock expressly declares that such stock should be transmitted only to his legatees and subject to substitution for their lives and inalienable and the Bank pretends to be free from responsibility when the transfer is made by the executors after the expiration of their trust without regard to the substitution and the conditions affixed by the testator. If such were the law, what guarantee would exist for a testator, that the  
 30 fortune of his children carefully invested in Bank stocks, and surrounded by him with every possible safeguard would be transmitted in accordance to his wishes?

By the sec. 33 of the charter, the shares of a deceased owner must remain in his name, until the declaration of transmission is duly authenticated and duly registered.

“ Provided always that every such declaration and instrument as by this “ and the following section of this act (*i.e.*, an adjudication by the Court) is “ required to perfect the transmission of a share of the Bank.

The Bank is further authorized to require corroborative evidence of any  
 40 fact alleged in such declaration.

It is established in this case, that no declaration of transmission of the shares to the executors was ever made or registered.

There was only a journal entry in the books of the Bank, six years after the death of the testator, without reference to the will, and during all that period the dividends were paid to the executors. The Bank could produce no declaration of transmission; it was intentionally withheld.

In the United States, from whose legislature our law and our system of

RECORD. joint stock corporations is mainly derived, shares in banks and other corporations are transferred by the owner and his representatives, the executors, and the transferee obtains a new certificate which enables him to dispose of them as original stock. Nevertheless the corporation is not free from liability to the owner, if his rights have been disregarded.

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The same rule prevails in England.

*Morawetz on Private Corporations, Vol. 1, s. 181, 182.*

“ But for the protection of the rights of the lawful owner of the shares, the Corporation is bound to use reasonable care in the issue of certificates; if, by the form of the certificate or otherwise, the corporation has notice that the present owner is not the absolute owner, but holds the shares by such a title that he may not have authority to transfer them, the corporation is not obliged, without evidence of such authority, to issue a certificate to his assignee; and if, without making any inquiry, it does issue a new certificate and the rightful owner is injured by its negligent and wrongful act, the corporation is liable to him without proof of fraud or collusion. All the authorities affirm such liability where the corporation has notice that the present holder is a trustee and of the name of his *cestuique trust*, and issues the new certificate without making any inquiry, whether his trust authorizes him to make the transfer.”

20

References :—

*Citing, Lonry v. Commercial and Bank, Tanry's Dec. 310.*  
*Bayard v. Farnier and Bank, 52 Pa. S. 232.*  
*Atkinson v. Atkinson and Allen, 15.*  
*Shaw v. Sprucer, 100 Mass. 383.*  
*Fisher v. Brown, 104 Mass. 259.*  
*Duncan v. Jandon, 15 Wall. 165.*  
*Shropshire Union Railway.*

182.—“ The fact, that shares are held or transferred by a person as executor, is notice that there is a will open to inspection upon the public records; and that the corporation and persons taking a transfer of the shares are bound at their peril, to take notice of the contents of the will.”

The same principle was recognized in our courts in the case of *Sweeney and The Bank of Montreal.*

7 House of Lords Rep. p. 496, *The Shropshire Union Railway v. The Queen.*

“ It is the duty of a person receiving as an equitable mortgage of railway stock, the certificate of the shares thereof, to inquire what is the real position of the person pretending to mortgage it, for if such person has only the legal title by having the certificate in his possession, but is in truth merely a trustee for another, the equitable mortgagee will be unable to enforce his claim in opposition to the original *cestuique trust*.”

40

“ Per the Lord Chancellor. In order to take away a pre-existing equitable title, something tangible and distinct having the strong and grave effect of

“ producing such a result, must be clearly proved to have taken place. The  
 “ burden of such proof lies on the person seeking to effect the previous equitable  
 “ title.”

*Held* : “ That this was the ordinary case of a trustee abusing his trust,  
 “ that if R. had made proper inquiries he would have found that H. was only a  
 “ trustee, and consequently the equitable title of R. could not prevail against  
 “ the earlier equitable title of the Company.”

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*Wood, Railway Law, Vol. 1, page 148.*

“ The general principal is that a corporation is bound in its capacity of  
 10 “ trustee for stockholder to protect owners of shares from unauthorised  
 “ transfers, and is liable in damages for any loss sustained through the  
 “ negligence or misconduct of its transfer officers in the execution of their  
 “ duties.

“ Thus, a corporation which permits a transfer of its own stock by an  
 “ executor as such on its books, is chargeable with notice of the will under  
 “ which he acts and the contents thereof, and is liable to a *cestuique trust*  
 “ under the will whose stock is by means of a transfer permitted without due  
 “ examination of the will converted to his own use.”

20 Taking for granted that the Bank was not bound to see to the execution  
 of the trust, they cannot plead that they ignored the will as they acknowledged  
 the executors to be in possession of the stock.

Then the question arises, could the Bank sanction and not be responsible  
 for a transfer of stock, a sale from one executor to himself, when the will  
 enjoined that no sale could be made except by two executors.

If it was a sale, it was null and void, so the Courts held in the case of  
*Carter v. Molson.*

If it was a disguised apportionment, the Bank could not ignore that no  
 transfer could be made to any of the devisees except as substituted property  
 and as usufructuaries.

30 In England, the executor has absolute power of sale and disposal of all  
 personal property, which is the contrary of our law as previously shown.

2 *Williams on Executors, page 936.*

“ It is a general rule of law and equity that an executor or administrator  
 “ has an absolute power of disposal over the whole personal effects of his  
 “ testator or intestate, and that they cannot be followed by creditors much less  
 “ by legatees, either general or specified into the hands of the alienee.

“ The power of the executors to dispose of a chattel specifically bequeathed  
 “ seems to have been formally questioned, but succeeding cases in modern times  
 “ have established it beyond dispute.”

40 He may mortgage, pledge and sell all assets and *choses* in action.

The Privy Council in the case of *Simpson v. The Bank*, 11 L. C. R. 384,  
 emphasized on this difference in the following terms :

“ It has also been argued before us that the power of the tutor is, by all  
 “ the authorities, held to include administration, and that administration  
 “ necessarily includes sale. But we dissent from that argument, we think

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“ that the supposition that the administration of the affairs of a ward necessarily involves the sale of a portion of his property, is one derived from the ideas which in England attach to the word ‘administration,’ which in its technical sense applies only to a legal personal representative; but this is in our opinion, wholly distinct from the functions of a tutor, and which in order to avoid confusion, it is essential to keep distinct. Administration, as applicable to a tutor, includes management, but does not include sale, unless to the limited and qualified extent already pointed out.

“ It is partly for this reason that we have not thought it necessary or desirable to comment on the authorities cited from the decisions of the English tribunals, and the arguments deduced from them; they have not in our opinion, any relevancy to the matter to be decided in this case.”

See notes of the Chief Justice in case, *Molson and Carter*.

“ This power (said the Chief Justice) could only apply to *bond fide* sales made in the interest of the estate and with a view to promote the intentions of the testator, but the Appellant as one of the trustees was not authorised to join another trustee, to sell to himself individually, any portion of the property bequeathed to him, with the avowed object of defeating the provision of the testator’s will. The sale was therefore made by one trustee alone to another trustee, contrary to the provision of the will, which required the concurrence of two of the trustees at least, as regards the sale of real estate. It was also against the express provision of Art. 1484 of the Civil Code, by which, administrators and trustees are declared incapable of purchasing the property in their charge.

“ By the will, the injunction to the trustees not to dispose of the property of the estate, applies equally to all investments.”

The English authorities on the subject of Trusts, with respect to shares in joint stock companies, have no application whatever and no analogy with our law.

In England, the law (48 Geo. III., c. 149) positively declares that banks are not required to *take notice* of trusts. *Grant on Banking*, p. 491, 492.

By our law they are exempted only from the obligation to *see to the execution of trusts* which is entirely different from ignoring its existence altogether.

In the present case the transfer of these shares is alleged, and proved to have been made fraudulently by the executor with the sanction, connivance and direct participation of the Bank, which, irrespective of any other grounds, would make the transfer absolutely null and void.

1st. The trust was ended and with it all power in the trustee to alienate.

2nd. The trustees had rendered their full and final account to the five heirs on the 25th March 1871. They made a notarial *dépôt* of the same, with a total schedule of all the assets of the estate, and on the same day, 27th of March, they allotted notarially to two of them, viz.: Joseph Dinham Molson, and the heirs of George E. Molson, the exact proportion, 640 shares each, of the total 3,200 shares, together with their one-fifth of the total assets of the estate, and on the fifth of April, the trustees transferred these same shares in

the books of the Bank, with all the conditions imposed by the testator as to the substitution and made them inalienable.

On the same day, 5th of April, the trustees also transferred to Alexander Molson and John Molson 640 shares each, but individually without mention of the substitution. Subsequently, on the 11th May 1871, the trustees transferred to Samuel E. Molson, the last of the five heirs, his 640 shares, carefully mentioning substitution, together with his one-fifth share of the total assets of the estate.

10 It is evident that the trustees allotted to each of the five sons their respective proportion they were entitled to receive in the investment made by the testator himself of 3,200 shares in this stock, with the perfect knowledge that they were substituted and inalienable. They sanction and acknowledge the equal right of each of the five heirs to 640 shares under the will, and subject to substitution, and they did transfer them in the books of the Bank in equal proportion, to each of them with mention of substitution, *except* as to Alexander and John Molson only.

The trustees transferred on the 25th May 1871, notarially, to John Molson his one-fifth interest in the total estate, and on the 15th June following to Alex. Molson, notarially, his one-fifth interest in the total estate, without 20 mentioning their 640 Molson Bank shares, but attaching a schedule showing there were 3,200 Molsons Bank stock divided amongst the five heirs equally.

The apportionment of those shares was completely settled and determined, by the executors amongst the devisees. There was and could be no reason whatever to sell any part of the said residue, it was neither necessary nor advantageous and there was virtually no sale. The shares were on the contrary apportioned amongst the devisees equally, with the sole difference that Alexander and John Molson were given their shares individually absolutely free from substitution in direct violation of the will, and as the Privy Council stated with regard to the real estate sold under the same authority: "Had 30 " not been sold for the purpose of dividing the price but had been allotted to " Alexander Molson as part of the *corpus* of his share of residue."

The Bank was fully aware of all these facts, its president, the executor, who disregarded and violated its trusts, cannot be said to have ignored his own acts, sanctioned and approved of by the accountant and officers of the Bank and its legal adviser, all under his control. The Bank by the will and by the transfer made to Dinham Molson on the 27th March subject to substitution *regularly entered in their books*, knew that the apportionment was made, that these shares were inalienable. The Bank must therefore be held to have known what its President knew, and did know that the transfer of the 640 40 shares to Alexander Molson was a direct violation of the testator's disposition, and as the Privy Council states "a colourable and not very creditable device " for giving Alexander Molson a larger interest in the property than he was " entitled to and for defeating the intentions of the testator with respect to " substitutions and the *insaisissabilité* of his son's usufruct."

The disregard of the regular appointment of Mr. Dinham Molson, as trustee is another important feature to show that the other executors intended to carry

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out their devise without obstruction, and possible detection. The appointment was legally notified to Mr. William Molson who was president of the Bank, and known to Mr. John Molson, the principal accountant. The two executors could have no reason to object to his nomination, and it is proven that it was Mr. William Molson the executor and president of the Bank, acting under the advice of the legal adviser of the Bank, who refused to acknowledge him and denied him any right to act as such trustee.

*7th Proposition.*—The *grevé de substitution* Alexander Molson, has the right and is entitled to demand the nullity of the transfer made to him individually as being null and void and to recover the dividends accrued upon the shares so illegally transferred. 10

As our law sanctioning the prohibition to alienate recognizes (Art. 969) the cause to be the interest of the party receiving, of the substitutes or third parties, it follows that prejudice done by alienation to the party receiving, to the substitute or even to third parties, gives the right to demand the nullity of any alienations made. The intention of the testator in this case is that the revenues shall be exclusively devoted to the maintenance of the institute for aliments, *i.e.*, the maintenance and education of his children. He, the said institute, is bound to execute this trust and cannot violate it. If by error of law or misconception of his obligation or even by disregard of his trust he has attempted to defeat the object of his trust, his first duty is to restore it for the benefit of his children and to take all legal means to secure its destination and recover what appertains to his children and family. 20

18 *Duranton.*—Page 449 Des Transactions, chapt. 11, No. 403, p. 449:—

“ Suivant l'article 1004, du Code de Procédure, on ne peut compromettre  
 “ sur les dons et legs d'aliments, logements et vêtements, et d'après l'article 581  
 “ du même Code ces objets sont insaisissables; c'est évidemment parce qu'on  
 “ les a considérés comme inaliénables, et le même principe veut pareillement  
 “ que le créancier ne puisse en faire la matière d'une transaction.

“ En conséquence de ces principes, la Cour de Nimes a jugé, par arrêt du 30  
 “ 18 Décembre 1822, que l'acte par lequel un donataire avait renoncé au don  
 “ d'aliments qui lui avait été fait, moyennant une somme représentative du  
 “ capital de sa pension, était nul et de nul effet, attendu que l'objet n'était pas  
 “ susceptible d'être aliéné par transaction ni par aucun autre acte.”

*Idem* page 451:—

“ Du reste dans tous les cas, il n'y avait que celui à qui les aliments étaient  
 “ dus et non l'autre partie, qui pouvait se prévaloir de la nullité de la transaction  
 “ faite sans l'autorisation du magistrat, parceque le but de la loi n'était  
 “ pas de prohiber absolument les transactions faites sur cette matière sans  
 “ cette permission, mais seulement d'empêcher que le droit aux aliments peut  
 “ être détruit ou même simplement diminué par cette voie; il en serait 40  
 “ incontestablement de même dans notre droit.

*Merlin*, vol. Des Aliments, chapt. 7 et 8, page 292.

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“Celui à qui on a, par testament, laissé de certaines rentes pour ses  
 “aliments ne peut pas, sans ordonnance du Juge rendue en connaissance de  
 “cause, transiger valablement sur les revenus qui ne sont pas encore échus,  
 “pour les diminuer. Cette disposition de la loi est d’autant plus sage, que  
 “si elle n’avait pas lieu, un dissipateur pourrait consommer en très peu  
 “de temps ce qui lui a été laissé pour subsister durant sa vie, et retomber  
 “ensuite dans la misère dont on a voulu le tirer. D’ailleurs, la libéralité ne  
 “serait pas employée selon l’intention de celui qui l’a faite, si l’on permettait  
 10 “à un prodigue de dépenser par avance ce qui est destiné à le nourrir  
 “journallement. Mais on peut bien transiger sur les revenus échus, quoiqu’ils  
 “aient été destinés pour les aliments, parce que celui auquel ils ont été  
 “laissés ayant vécu sans se secours, les revenus passés ne doivent plus  
 “servir aux aliments, ni par conséquent en avoir la faveur. Il ne faut pas  
 “néanmoins prendre ceci à la lettre; car si celui qui doit des aliments avait  
 “été en demeure de les payer, et que celui auquel ils sont dus eut été obligé  
 “d’emprunter pour vivre, les arrérages passés conserveraient alors tout leur  
 “privilege.”

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*Salon Nullités*, No. 152.—“La convention doit toujours avoir un objet  
 20 “licite c’est-à-dire qui ne doit pas contraire aux lois, aux bonnes moeurs, à  
 “l’ordre public. Ainsi il est défendu de compromettre sur les dons et legs  
 “d’aliments logements, vêtements, questions d’état.”

No. 159.—“La cause est de l’essence des conventions et des contrats, Art.  
 “1108 C. C., et toute obligation sans cause, ou sur une fausse cause, ou sur  
 “une cause illicite ne peut avoir aucun effet.”

No. 162.—“L’obligation a une cause illicite lorsque celle-ci est prohibée  
 “par la loi.”

*Duvergier*, Vente, page 258, No. 214.—“Il me semble qu’on doit poser  
 “comme règle générale, que le droit aux aliments dus en vertu de la loi, ou  
 30 “par suite de libéralités est inaliénable; qu’il n’y peut y avoir d’exception  
 “qu’autant que la cessation du droit ne modifie point les résultats; que la sage  
 “prévoyance du législateur ou de l’auteur de la libéralité a voulu obtenir; que  
 “la cession sera donc nulle, si elle a pour objet de substituer un capital une  
 “fois payé à des prestations périodiques ou quodidiennes, comme le sont les  
 “besoins de la vie, s’appliquant exclusivement à la satisfaction de ces besoins,  
 “ne pouvant recevoir aucune autre destination et garantissant ainsi ce que  
 “législateur et le donateur ont voulu assurer.”

“Tout se réduit donc à décider, dans chaque espèce, si la cession ôte aux  
 “aliments leur véritable caractère, si elle fait manquer le but que l’on s’est  
 40 “proposé en les accordant; et la solution de cette question, de fait, dépend la  
 “validité de la cession.”

(1.) “Je ne fais là que développer une idée énoncé dans un avis du  
 “conseil d’Etat, du 2 Février 1808, qui déclare les pensions sur l’état inaliénable,  
 “par le motif que ces pensions doivent être considérées comme des aliments  
 “accordés par l’état et destinés spécialement à l’individu qui les obtient:

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“ qu’elles ne pourraient devenir par une vente, la propriété d’un autre, ‘ sans  
“ ‘ que l’objet bien evident de cette institution ne fut manqué, puisque l’intention  
“ ‘ du gouvernement a été d’aller au secours annuel, et non de donner une somme  
“ ‘ une fois pour toute.’ ”

This question has been decided by the Court of Review in February 1892, in a most elaborate judgment in the case of *La Cie. des Prêt vs. Michel Bouthillier*, where the party who had received a donation à titre d’aliments without any stipulation that the same was not transferable or inalienable was held to be entitled by law to claim the arrears, notwithstanding a transfer made by him.

10

2 *Chardon*, du Dol., p. 105, No. 48.

“ Une première règle à laquelle nous ne connaissons qu’une seule exception  
“ (v. le No. 50) est qu’à l’égard même des contractants, la simulation est une  
“ cause de nullité radicale ; et que chacun d’eux est recevable à l’attaquer,  
“ contre celui qui veut consommer la fraude projetée, ou s’en approprier les  
“ effets par une seconde fraude.

“ Quelque soit le but d’une simulation frauduleuse, elle n’a ce caractère  
“ reproché, que parce-qu’elle enfreint une disposition prohibitive de la législation ;  
“ or, dans ce cas, elle ne peut avoir aucun effet.

“ L’obligation sans cause, ou sur une fausse cause, ou sur une cause illicite, 20  
“ ne peut avoir aucun effet. Art. 1,131 du Code Civil.

“ La cause est illicite, quand elle est prohibée par la loi, quand elle est  
“ contraire aux bonnes moeurs ou à l’ordre public. Art. 1,133.

“ Nous n’avons, ni dans le Code, ni ailleurs, aucun statut qui soit plus abso-  
“ lu et moins susceptible d’exception ; c’est une des bases fondamentales de la  
“ théorie des contrats ; elle n’est placée là que dans l’intérêt des contractants,  
“ puisqu’à l’égard des tiers, leur sort est assurée par l’article 1165. Les con-  
“ ventions n’ont d’effet qu’entre les parties contractantes, et ne nuisent point  
“ aux tiers.

“ On fonde le système contraire sur l’axiome ; *Propriam turpitudinem* 30  
“ *allegans non est audiendus*. On verra dans un instant que cet axiome n’est  
“ judicieusement invoqué que par les tiers, quand l’auteur de la fraude veut  
“ s’en faire une arme contre eux. On peut d’ailleurs lui opposer un autre  
“ axiome non moins moral ; *nemini sua fraus patrocinari debet*. Mais  
“ ce n’est pas par des axiomes dont le sens est si général, et qui ne sont  
“ reproduits par aucun texte de notre Code, qu’on peut établir des exceptions à  
“ une règle aussi impérieuse que celle tracée dans les articles que nous venons  
“ de citer.

“ Sans doute celui qui pour désobéir à la loi, a fait un contrat frauduleux,  
“ est blamable ; mais est-ce un motif raisonnable de se refuser à l’entendre 40  
“ lorsque le remords, ou le regret, le détermine à en demander la destruction ?  
“ Est-il plus moral de satisfaire le complice qui persiste dans sa fraude, et de  
“ punir celui qui se repent, en laissant sa dépouille à celui qui est invariable-  
“ ment pervers ? ”

The question whether a party to a simulated or fraudulent contract was entitled to demand its nullity and avoid the consequences of his own act was



determined by our Court of Queen's Bench in a case of *Denoon and Denoon*, 3 Montreal Q. B. R., page 421, overruling the previous decision of *Gareau and Gareau*, 24 L. C. J., page 248.

In the present case the question of fraud may be altogether eliminated—and there is really none to be imputed to Alexander Molson. He was, it is true, one of the three executors appointed by the testator, and comparatively a young man. By his father's will all matters of importance involving the disposal of any part of the estate was left to the decision of the brother of the testator William Molson, who was president of the Bank, a man of the greatest  
 10 experience and of the highest character. With the advice and under the direction of one of the most distinguished council of Canada, he believed that he was fully justified in transferring absolutely as he did these 640 shares each to two of the five legatees, and that the provisions of the will with regard to substitution, inalienability, *insaisissabilité* and aliments did not apply; and he must be presumed to have offered to make over to Alexander Molson and to his son-in-law, John Molson, their respective proportion in the 3,200 shares belonging to the estate. Virtually the transfer was made by William Molson alone. Can Alexander Molson be taxed with fraud in accepting  
 20 this transfer under such circumstances? Is it not to be presumed on the contrary that he believed as his uncle did, that there was no substitution or other condition attaching to the transfer making it illegal? If so there can be no moral fraud.

And then, after further inquiries made, when called upon by the curator to the substitution and by some of the institutes, his children, to give an account of the transaction, they claiming that these 640 shares were their property, secured to them for their maintenance and education and as aliments of which they were deprived and had been and would be forever lost to them, finding that he had committed a wrongful act—if these share were really the property of the substitutes, and if the executors had no power to transfer them and by  
 30 misconception of his obligation as trustee, he participated in the illegal act—is it not his paramount duty to have them restored to the legitimate owners, even at the loss and injury of the parties who originated and carried out the transaction, admittedly by error, but certainly in direct violation of law.

To contend that the participation of the institute in the alienation of property specially reserved for the benefit of third parties and held by him in trust, debarred him and them from obtaining redress, would perpetuate and consecrate spoliation and render it irrevocable. It would in fact secure immunity to the wrong-doers to the prejudice of their victims.

Judgment was rendered by the Superior Court on the above issues  
 40 dismissing Plaintiff's action on one ground only, to wit: That the law in this Province, Art. 125 of the Ordinance of 1629 prohibited substitution of moveables, and that although the provisions of this Ordinance had been modified in France, by the Ordinance of 1747 on substitutions, the latter Ordinance was never registered in the Conseil Supérieur of Quebec, and consequently the prohibition of the previous Ordinance remained in force, and further that the Article 838 of the Code which declares: "The capacity to receive by will is  
 " considered relatively to the time of the death of the testator; in legacies

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“ the effect of which remains suspended after the death of the testator whether  
“ in consequence of a condition or in the case of a legacy to children not born,  
“ or of a substitution, this capacity is considered relatively to the time at  
“ which the right comes into effect,” was applicable and supported Respondent’s  
contention.

This article, says the learned Judge, contains the rule of law anterior to the Code, which only refers to the personal capacity of the legatee to receive a legacy, not to the right of the testator to dispose of a portion of his property of which the law prohibits substitution, and that this right of the testator, and the prohibition must be considered at the date of the making of the will, and according to Article 835, this prohibition existed, and forbade the testator absolutely to create a substitution of moveables and that Bank stocks were moveables. 10

It seems surprising that of all the French authors who have written on the subject of substitution not one alludes to this Ordinance of 1629, except to mention that it never was in force or followed in France, although some of its provisions may have been accepted by the Courts which under the then existing regime had *quasi* legislative powers.

This Ordinance was never registered in the Parliament of Paris.

Isambert, Larousse, and all historians report that it never was registered ; 20  
the Courts of Justice never referred to it and d’Aguesseau the author of the Ordinance of 1747 before preparing it, requested all the Parliaments of France to report how far the substitution of moveables was favoured or prohibited. The answers of all the Parliaments are noted by him, and he certifies that the Parliament of Dijon, Metz and Besancon alone had excluded the substitution of moveables, and it was after this careful investigation that the Ordonnance of 1747 was promulgated which did not allow substitution of moveables generally, but on the contrary restricted it only to capital sums invested or to be invested and precious moveables ; consequently there is no ground whatever to assert that this Ordinance of 1629 was in force and became part of our laws, or that the 30  
Ordonnance of 1747 established a new principle respecting substitution of moveables.

Moreover taking this very article 125 of the Ordonnance of 1629, it does not preclude substitutions of all moveables, but allows them to apply to *pierres précieuses de fort grand prix*.

At the date of the Ordonnance of 1629 shares in industrial corporations, or bank stocks, were unknown, but all sums of money invested to obtain interest therefrom perpetually until the capital was repaid were classified as constituted rents, *rentes constituées*, and as such immoveables, *immeubles fictifs*, a principle which our Courts and the Privy Council in the case of the Bank and Simpson declared to apply equally to Bank shares as identical in 40  
nature and character, and which the codifiers embodied in the Art. 297 of our Code.

Pandectes Françaises, Vol. 13, Vo. Biens No. 545, 546.

“ La rente constituée en perpétuel était immeuble.”

Tuzies Herman, Rép. Gén. du Droit Français. Vol. 8, Vo. Biens, No. 454, 455, p. 27 :

“ La rente constituée était par une sorte d’anomalie considérée comme “ immeuble dans la plupart des coutumes.”

Grande Encyclopédie, Vol. 16, Vo. Biens, p. 716 :

“ Il y avait dans le pays le coutume deux sortes de meubles, les meubles “ corporels véritables ou fictifs, et les meubles incorporels. Les meubles “ corporels véritables étaient tels qu’on les comprend aujourd’hui et la classe “ des meubles corporels fictifs ne concernait que les immeubles ameublis par  
10 “ contrat de mariage.

“ Quant aux meubles incorporels, on réputait tels les obligations de payer “ une somme d’argent ou toutes autres choses mobilières. Suivant quelques “ coutumes les rentes constituées à prix d’argent étaient également meubles “ incorporels ; mais le droit commun se prononçait en sens contraire et les “ déclarait immeubles jusqu’au rachat.”

The Ordonnance of Orleans excepted “*choses précieuses*” from the power of the tutor to dispose of moveables and the Courts have invariably held that invested capital was comprised in this prohibition and our own Courts went further and declared Bank stocks to be “*immeubles fictifs*” and this several  
20 years before the Code.

Besides supposing it were law, it cannot be denied that it never was followed in France ; so that for nearly a century and a half before the establishment of the *Conseil Supérieur* its existence was ignored and had fallen into oblivion. Supposing even it had been regularly registered in the Parliament of Paris, then all these writers and the Courts of France must have been in total ignorance of the law ; and the Statute of 1801 finds no room for application when it allows testators notwithstanding any contrary provisions to dispose of their property moveable and immoveable on such terms and conditions as they think proper without any restriction whatever.

It is difficult to understand the arguments which the learned judge invokes  
30 in support of his theory derived from the Articles 838 and 835 of our Code which he deems to be the law anterior to our Code, when the first of these articles positively declares that as to every legacy suspended upon condition or in case of substitution, the capacity to take is considered only when the right is open, and the Article 835 has no application whatever, merely stating that the capacity of the testator is considered relatively to the time of making his will.

The decisions in the cases of *Hamilton* and *Prenderleath*, and *King* and *Tunstall*, are in direct contradiction to the proposition enunciated by the Judge,  
40 and the reason given that before the Code, bank stocks were considered as ordinary moveables, is also in direct contradiction with the Article 297, and the decision in the case of *Simpson* and *The Bank of Montreal*, which has ever since its date been acknowledged as the law of this Province.

Although the learned Judge based his official judgment upon his Ordinance of 1629 as his sole *considérant*, he nevertheless thought fit to state his independent opinion on the other points raised by the pleadings.

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II. The question which he considers also as important, viz.: whether the Article 16 of the will allowing the executors to apportion between the legatees the residue which they have done, by the deeds of the 27th March, 11th May, 26th May, and 15th June, and for that purpose to sell any portion of the same and give the proceeds to the institutes, and particularly bank shares, and whether such partition finally fixes and determines the shares of the legatees in the assets of the estate and binds the substitution? the learned Judge decides without hesitation in the affirmative, and holds that this clause gives them unquestionably full power to do so.

The learned Judge in the official judgment quotes only the words, "to sell 10  
" any part of the said residue and in lieu thereof to apportion and divide the  
" net proceeds of the sale thereof; it shall be competent for them to do  
" so, anything hereinbefore to the contrary notwithstanding." This clause  
according to the learned Judge, justifies fully what has been done by the  
executors, and gives them absolute discretion to dispose of the residue, removes  
and cancels all the previous provisions of the will by which the testator,  
clause 10, appointed the executors trustees to administer and manage the  
residue of his estate for ten years only, and to sell only such part of his real  
estate which is not specifically devised and to invest the proceeds and other  
moneys not already invested in real estate or bank stock, and after the ten 20  
years to give up the residue as the same shall then be found to the residuary  
legatees.

The learned Judge moreover takes no notice of the words in the sixteenth clause which precede and follow the extract he quotes, as well as the previous clauses and the whole context of the will, which must necessarily be considered in the interpretation of these words.

This 16th clause to which the learned Judge attached so great an effect as to repeal all previous conditions fully and positively enacts: "That as soon as  
" may be practicable after the term herein-before limited for the continuance  
" of the said trust, the said trustees shall apportion and distribute the said 30  
" residue of my estate to and among the parties entitled thereto as herein-  
" before directed, taking care in such apportionment and distribution to provide  
" as far as possible and in such manner as the said trustees shall deem best  
" as well against the risk of the capital being lost, &c."

In this very clause 16, the intention of the testator is clearly expressed on the following points:—

1st. That the distribution and apportionment is subject to previous conditions of his will "shall apportion and distribute the residue as herein-above  
" directed."

2ndly. That the duration of this trust is strictly limited to ten years, 40  
" after expiration of the time hereinbefore limited for the continuance of the  
" said trust," the said trustees shall apportion and distribute the said residue.

3rdly. The only power to sell is "if in making the apportionment" it is necessary or advantageous to sell any part of the said residue and in lieu thereof to divide the net proceeds it shall be competent for the trustees to do so.

4thly. For making the apportionment, the trustees are enjoined not to do

so without providing against the capital of any of the shares being lost in the hands of any holder thereof under substitution.

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All these conditions are contained in this clause, and can it be contended that the testator by the words extracted and isolated from the context of the whole clause, to say nothing of the previous clauses of the will, gave absolute power to the trustees to disregard them altogether, and allowed them to give without any condition or substitution the very portion of the residue which was part of the respective shares allotted to the legatees. Can it be contended that the testator did not limit the trust to the ten years when he uses the words

10 “the term hereinbefore limited for the continuance of the said trust,” and that the words “if in making the apportionment and division it be found necessary “or advantageous to sell any part of the residue and in lieu thereof to “apportion the net proceeds,” did not extend such power, but must on the contrary be construed to mean that during the trust and before its expiration the trustees may sell part of the residue to apportion the proceeds, especially when the testator moreover directs these trustees, Clause 10, “that as soon “as practicable *after* the expiration of the term of the said trust to account and “give up the said residue *as the same shall then be found* to my residuary “devisees and legatees.”

20 How can it possibly be held in face of such positive provisions that the trustees had power to sell, when the trust had terminated and when the testator declares that the property at the termination of it became the absolute property of the legatees subject to substitution and inalienable and *insaisissable* without an express revocation of these conditions and restrictions. And how can the injunction of the testator restricting this power to real estate and also the necessity or advantage of apportionment be overlooked.

On this last point the question was settled by the decision of the Court of Appeals and of the Privy Council in the case of *Carter and Molson*, as already shown by the Appellants, which was cited and commented upon by them as

30 conclusive, but the learned Judge has not thought proper to take any notice of it. He refers, however, to this extract of the Clause 16 and Article 952 of our Code to justify his view that the testator had given to the trustees the unlimited power of alienating at any time before the final rendering of account without any regard to the substitution and the other conditions of his will.

In his notes, the learned Judge states that the previous clauses of the will *appear* to limit the power of sale granted to the executors to real estate, and also *appear* to manifest the desire of the testator that the bank shares should not be sold during the ten years of the trust, but he in effect states that the testator says subsequently in perfectly clear language and without ambiguity in several

40 clauses of the will: “After the expiration of ten years you (the executors) “shall make the division yourselves, and for this purpose I give you absolute “power. You shall have the right to sell whatever remains of my estate “instead of allotting to each of the institutes his share, you shall have the right “to dispose of this estate as you please and to divide the proceeds in lieu “thereof notwithstanding the anterior clauses of my will.”

No wonder that with these very clear expressions of the testator, as he reads them, the learned Judge found the question so simple that it could not

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possibly give rise to discussion, but no such expressions really exist or can be fairly inferred to any such extent from any portion of the will. It is sufficient to call the attention of the Court to a comparison of these positive assertions with the will itself, to show how widely they differ.

This statement is not a quotation from the will, it is an interpretation, the result of the labour and analysis of the learned Judge.

There is no such clear language as stated in *several clauses*, but the only words of the testator might give colour to this interpretation are the following, found in one clause only, the 16th :—

“ And if in making the apportionment and division of the said residue the 10  
“ said trustees shall deem it necessary or advantageous to sell any part of the  
“ said residue and in lieu thereof to apportion, and divide the net proceeds of  
“ the said thereof, it shall be competent for them to do so anything hereinbefore  
“ to the contrary notwithstanding.”

It is impossible to find in these words alone what the learned Judge holds to be the final intention of the testator, viz. : After the expiration of 10 years I give you the absolute power to make the division yourselves and for that purpose you shall have the right to sell whatever remains of my estate as you please and instead of allotting to each of the institutes his share to sell the whole 20  
and give the proceeds in cash.

The Appellants submit that such a declaration was necessary to give to the words the effect of completely annulling and revoking the most positive injunction of the testator's will, most carefully prepared, but unfortunately for the Respondent no such expressions conveying such meaning exist.

To arrive at this conclusion the Judge has failed to apply correctly the rule of interpretation, *i.e.*, to take the whole context of the will to ascertain the intention of the testator; he takes an incidental sentence which in no manner excludes the carrying out of his previous positive instructions, and by giving a forced extension and meaning to a few words, virtually cancels the most 30  
essential provisions of the will.

Civil Code L. C. Art. 1013. When the meaning of the parties in a contract is doubtful, their common intention must be determined by interpretation rather than by an adherence to the literal meaning of the words of the contract.

1015. Expressions susceptible of two meanings must be taken in the sense which agrees best with the matter of the contract.

1018. All the clauses of a contract are interpreted the one by the other, giving to each the meaning derived from the entire act.

*Aubry and Rau*, V. 7, p. 460.

“ Le dispositions de dernière volonté, qui ont besoin d'être interprétées, 40  
“ doivent l'être d'après l'intention présumée de leur auteur. Arg. art. 1156.  
“ Le juge droit, avant tout, rechercher cette intention dans l'ensemble des  
“ clauses du testament, ou des testaments s'il en existe plusieurs, en  
“ s'attachant, moins au sens technique des termes dont il s'est servi, qu'à

“ l'acception dans laquelle il les a vraisemblablement employés d'après ses habitudes de langage.”

*Demolombe*, Vol. 21, p. 635.

“ 740.—C'est ainsi que le grande règle d'interprétation, qui domine toutes les autres, dans les testaments comme dans les contrats, est celle de l'article 1156 ; que l'on doit rechercher quelle a été l'intention, plutôt que de s'arrêter au sens littéral des termes.

“ *In conditionibus testamentorum, voluntatem potius quam verba considerari oportet.*” (L. 101, princ. ff. De condit et demonsts.)

10 The interpretations given to this same clause by the Court of Appeal and the Privy Council deserved also serious consideration from the learned Judge, but he did not deem proper to refer to them. From his finding of the facts it appears that the trust was ended, the allotment made and each of the legatees was entitled to 640 shares which the executors delivered over to them respectively, with this sole difference that towards all the others they observed the injunction of the testator, which they entirely disregarded in the transfer of these 640 shares to Alexander Molson, thereby showing that the precedents applied to the same condition of facts complained of by the Appellants.

20 The learned Judge finds no foundation whatever in the objection raised arising from the fact that the transfer was made from one executor to another, one trustee to the other, when the testator enacted that two at least of the trustees should be a party to any sale or transfer. What difference does it make, says the Judge, could they not transfer it to a third party, and who then could complain?

The difference is very essential. The law says you can sell to whomsoever you like, and if the executors had this power they can exercise it, but the law remains which prohibits any sale by one executor to another, or rather the purchase of any trust property by a trustee. It is a new 30 proposition, and which renders the prohibition of no avail, if this answer is good ; because there is no case where a trustee or administrator with such power cannot sell to any party, but there is no exception to the rule that he cannot purchase, and here again the decisions of the Court of Appeal and of the Privy Council are overlooked as well as the positive enactment of our Code.

It is unnecessary to dwell upon the reason given that the fact of the partition and its acceptance precludes the Plaintiff and the Curator from attacking the transfer of the 640 shares. It is entirely new doctrine and unsupported by any authority or reasoning.

40 III. The question of inalienability and *insaisissabilité* meets with no favour from the learned Judge. According to his view this only concerns the institute and only what has been given to him by the partition. If it is property reserved for his aliments and that of his wife and children that has been illegally alienated, he certainly is concerned and entitled to have it restored. What is meant by saying that this inalienability only applies to

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what is assigned by the partition is difficult to understand, it is not what is assigned which is alone inalienable, but the whole estate and every part of it, and more particularly what was and should have been allotted, as it is contended that this 640 shares were part of the residue allotted to Alexander Molson.

IV. On the liability of the Bank the learned Judge is satisfied that it was a perfectly legal transaction and that the charter and the Banking Act denies all recourse, and the Bank had a right to consider the transfer as perfectly legal. The Appellants submit they have fully discussed this question. 10

On this point the Respondents having referred to a case in the Supreme Court in Equity of New Brunswick, of the 26th December 1891, which was not mentioned as published in any report but communicated and handed to the Court at the argument by the Respondents, in typewriting, the Appellants think proper to offer a few remarks. In this case, one Stanley Boyd as administrator of the will of John Boyd, was Plaintiff against the New Brunswick Bank, and claimed 62 shares of the Bank stock as entitled to it by the grant of letters of administration. Having filed with the Bank probate of the will and letters of administration he required the Bank to transfer the stock, which they refused to do on the ground that by the will, this stock was to be divided 20 amongst certain legatees. The Court held that under the charter of the Bank Sec. 34, which enacted "that if the transfer has taken place by virtue of any "testamentary instrument or by intestacy, the probate of the will or the letters "of administration or act of curatorship be produced with the cashier or other "officer who shall thereupon enter the name of the person entitled under such "transmission to the register of shareholders; and the production to the "directors and the deposit of any authenticated copy of the probate of the "will shall be sufficient justification and authority to the directors for paying "any dividend or for the transfer of any share.

"Under this clause of the charter," said the Judge, "the effect though 30 "obscure does not appear to be different from the Imperial Statute 8 & 9 Vic. "cap. 91, which enacted that all stock standing and which hereafter stands in "the name of any person deceased shall be assigned and transferred to the "executors or administrators of the deceased, notwithstanding any specific "bequest thereof with the proviso that the Bank shall not be required to allow "the executors or administrators to transfer any stock or receive any dividend "thereon until the probate or letter of administration shall have been left with "the Bank for registration, and that the Bank may require all the executors "who have proven the will to join and concur in any transfer."

There can be no analogy whatever between the provisions of the charter 40 of the Molsons Bank and this provision of the New Brunswick statute. The latter specifically declaring that the appointment of the administrators is alone to be considered by the Bank, the executors being to all intents and purposes the proprietor of the shares without regard to any condition imposed on the executors for subsequent conveyance as this would imply the looking at the execution of the trust.



In the absence of any such provision in our law or in the charter of the Molsons Bank akin to those of the Imperial Statute, or the New Brunswick Bank charter and when our law denies to the executor any right of property or title to the shares and acknowledges him only as administrator without power to sell except as an agent and on such conditions as the testator may have fixed, a decision under such a totally different system cannot be made to apply to the transfer of bank shares under the law of the Province of Quebec.

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In addition to the comment made by the Appellants on the liability of the  
10 Bank on an improper transfer of stock they again refer to the case of *Molson*  
and *Carter* wherein the Privy Council held with respect to a sale made by  
these executors under the same provisions of the will of an immoveable  
property "that all persons who transacted with Alexander Molson on the fact  
" of his being the owner of the St. James Street property were bound to inform  
" themselves of and must be held to have known the tenor of these two deeds,  
" the will of the Hon. John Molson and the sale by William Molson and  
" Alexander Molson to Alexander Molson of the property because the deed of  
" 15 June 1871 constituted Alexander Molson's immediate and only title to  
" the property and it sets forth *in gremio* that his authors (the executors) held  
20 " the property under the trusts of John Molson's will and had transferred it to  
" Alexander Molson by virtue of a power of sale to be contained in the will.  
" Accordingly if it be the case as the Court of Queen's Bench have held that  
" the deed of June 1871, though professing to give effect to a transaction of sale  
" was in reality a conveyance to Alexander Molson of that which had been  
" allotted to him as part of his fifth share of the residue of his father's estate  
" and that the terms of the registered deeds were sufficient to notify that fact  
" to the Appellant as to put him upon his inquiry in regard to it, it seems to  
" follow that he cannot prevail in this appeal. In that case the property would  
" be identified on the face of Alexander Molson's title with his share of residue  
30 " under his father's will: and every person dealing with him on the face of that  
" title would either have the knowledge or the means of informing himself that  
" the property as part of the share of residue was *grévé de substitution* in favour  
" of Alexander Molson's wife and children and that the usufructuary interest  
" was not arrestable."

If the Privy Council, confirming the judgment of our Court of Appeals  
held that a third party purchasing from Alexander Molson property transferred  
to him by the executors was bound to know of his (Molson's) incapacity to  
dispose of it by reason of a reference to the will of his father—how can it be  
contended that the Bank can escape from the responsibility of an illegal  
40 transfer of stock when fully notified of all the conditions of the will, and when  
constituted the depository, guardian and trustee of the testator's stock for his  
legal heirs and representatives.

V. As to the absence of Dinham Molson and his non-concurrence in the  
conveyance of his stock as trustee duly appointed under the will, the learned  
Judge dismisses the objection on the ground that the evidence does not warrant  
it as he never acted but refused to act. The Appellants respectfully submit

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that the evidence contradicts this assertion. The Respondents were bound to prove this fact, and the only evidence in the record is the regular notification given by him of his appointment to his co-executors and his testimony that they refused to acknowledge him and advised him not to act.

VI. The learned Judge goes further than could be anticipated on the question of the right of the Appellants to impugn the legality of the acts of the executors. He has no hesitation in saying that supposing even the transfers to be in direct violation of the provisions of the will and the injunctions of the testator, the Appellants have no right whatever to call them in question when sanctioned by the Institute so long as he lives. So the principle here laid down 10 is that every alienation made by a trustee in violation of his trust must remain inviolate during the lifetime of the trustee. The bare enunciation of such a proposition carries its own refutation.

Analysing the judgment of the Supreme Court and the reasons given, we find that the following rules have been laid down, which this Court is called upon to sanction:—

1°. Before the promulgation of the Code the law prohibited substitution of moveables.

2°. Bank shares are moveables in the common sense of the word and subject to the ordinary power of alienation by administrators overruling the 20 decision of *Simpson* and the Bank of Montreal.

3°. Executors entrusted with power to manage an estate for a fixed period of ten years notwithstanding the declaration contained in the will, that the whole estate is substituted inalienable, insaisissable and given for aliments, can alienate any portion in favour of the Institutes free from any such condition after the expiration of the trust if the trustees are allowed to sell such property for the purpose of division.

4°. An executor and trustee can make a valid sale to his co-executor of the property of the trust, overruling the decision of the Court of Appeal and Privy Council in case *Carter* and *Molson*, and discarding Articles 297 and 380 30 of the Code.

5°. If a testator appoints three executors with power to sell part of the estate on condition that two of them should join in such sale, one alone can effect a valid sale.

6°. The Bank wherein shares belonging to an estate have been transferred by the executors without regard to the condition enjoined by the testator for such transfer cannot be held liable for the non-observance of these conditions.

7°. An Institute who has been a party to a sale of property declared to be substituted, inalienable and insaisissable and for aliments for himself and his family cannot bring an action to have such sale set aside and the property 40 restored, even with the concurrence of the tutor to the substitution.

The reversal of any one of these rulings, the Appellants respectfully contend must be followed by a reversal of the judgment which they confidently expect.

This Court may perhaps complain with reason of the unusual length of the comments made on the present appeal the reiterated reference to elementary principles and of the too extended arguments on some points which might have been dispensed with or abridged; but the apology lies in the fact that the Court below has questioned and contradicted these principles of law on which the Appellants relied and disregarded what they considered as positive enactments of our Code, and as they think precedents of our highest Courts and the jurisprudence of centuries thus constraining them to reassert those principles and to establish that the cited decisions of our Court of Appeal and of the

10 Privy Council are applicable to this case, notwithstanding the contrary view expressed by the learned Judge.

Montreal, 15th March 1893.

ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Appellants.

Hon. R. Laflamme, Q.C., Counsel.

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### Document V.

#### Respondents' Factum.

20 This is an Appeal from a judgment of the Superior Court, Mr. Justice Taschereau, of the 6th October 1892, dismissing Plaintiffs' action with costs.

The Plaintiffs, A. B. Stewart, as curator to the substitution created by the Honourable John Molson in favour of the children of Alexander Molson, Alexander Molson as Institute under the substitution, and Herbert S. S. Molson, one of the titular substitutes, on the 3rd of February 1890, brought an action against the Molsons Bank, by which they prayed that the Bank might be condemned to *deliver over transfer and place into* their names as Institute and curator of the substitution under the will of the late Hon. John Molson, 640 shares of the stock of the Bank and in default to pay to the Plaintiffs

30 \$60,000 with interest and further to pay to the Plaintiffs \$70,000 as dividends on the same, &c., &c.

The Plaintiffs' claim, briefly stated, was as follows:—

That the Honourable John Molson, who died at Montreal on the 12th July 1860, by his will had left his property to three trustees, his brother William, his wife Mary Ann Elizabeth and his son Alexander (one of the Plaintiffs) in trust. The trustees were directed, as soon as practicable at the end of ten years, to apportion and divide the estate, taking care in the manner that they might deem best, to protect the interest of the substitutes; and they were given power, if they deemed it an advantage, to sell any part of the

40 estate, and in lieu to apportion the proceeds, anything in the will to the contrary notwithstanding. This bequest was in trust.

The following sections of the will are those which have reference to the matters in question:—

Tenthly. And as to the residue of my estate, real and personal, where-soever the same may be, and of whatsoever the same may consist, of which I

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may die possessed, or to which I may then be entitled, I give, devise, and bequeath the same to my said brother William Molson, of the said city of Montreal, Esquire, Mary Ann Elizabeth Molson, my beloved wife, and Alexander Molson, my youngest son now living, the survivors and survivor of them, and the heirs and assigns of the survivor of them, upon the several trusts herein-after declared, that is to say, upon trust: firstly, to hold, administer, and manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease, and further, if my said wife be living at the expiration of that term, and shall have acceded to the condition expressed in the sixth section of this my will, until the expiration of one year from and after her decease; secondly, to sell and convey all such parts of my real estate as are not hereinbefore specifically devised, and as they shall deem it advantageous to my estate to sell, and to grant deeds of sale and conveyance of the same, to receive and grant receipts for the purchase moneys, to invest the purchase moneys and all other moneys arising from or accruing to my estate, and not already invested, on good and sufficient security, either by way of hypothèque or mortgage of or on real estate, or by the purchase of Government stocks, or stocks of sound incorporated banks, so as to produce interest, dividends, or profits, to secure the regular payment of the annuity payable to my said wife under her said marriage contract, and the additional annuity hereinbefore bequeathed to her, and generally to comply with and fulfil all other the requirements of this my will; and, thirdly, *at or so soon as practicable after the expiration of the term of the said trust, to account for and give up the said residue, as the same shall then be found, to my residuary devisees and legatees hereinafter named,* in all questions touching the sale and disposition of any part of my estate, or the investment of moneys arising from my estate or accruing thereto, the concurrence of any two of my said trustees of whom, while living, my said brother William Molson shall be one, shall be sufficient. 10

Thirteenthly. I further will and direct that, at the expiration of the term hereinbefore limited for the continuance of the said trusts, the said residue of my estate, real and personal as the same shall subsist, shall, under and subject to the conditions and limitations hereinafter expressed, fall to, and become and be, for their respective lives only, and in equal shares, the property of my said five sons, and at the death of each of my said sons, or if any of them shall have died before the expiration of the said term, the share of the one so dying, or who shall have died, shall become and be for ever the property of his lawful issue, in the proportion of one share to each daughter and two shares to each son, subject, however, to the right of usufruct thereof on the part of his widow, if living, for so long only as she remain his widow. It is my will, however, that it shall be, and I hereby declare it to be competent to each of my said sons by his last will and testament, or by a codicil or codicils thereto, but not otherwise, to alter the proportions in which, by the foregoing bequest and devise, a share of the residue of my estate is bequeathed and devised to his lawful issue, and even *to will and direct that one or more of his said lawful issue shall not be entitled to any part or portion of the said share of the residue of my estate, anything herein contained to the contrary notwithstanding.* 40

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Sixteenthly. And I further will and direct that, *as soon as it may be practicable after the expiration of the term hereinbefore limited for the continuance of the said trust, the said trustees shall apportion and distribute* the said residue of my estate to and among the parties entitled thereto, as hereinbefore directed, *taking care in such apportionment and distribution to provide (so far as may be possible, and in such manner as the said trustees may deem best)* as well against risk of the capital of any of the shares being lost in the hands of any holder thereof, under substitution or as usufructuary thereof, as against risk by reason of my said engagements under the marriage contracts  
 10 above referred to of my sons John and Alexander, and *if in making the apportionment and division of the said residue the said trustees shall deem it necessary or advantageous to sell any part of the said residue, and in lieu thereof to apportion and divide the net proceeds of the sales thereof, it shall be competent for them so to do, anything hereinbefore to the contrary notwithstanding.*

Eighteenthly. It is further my express will, and I hereby specially direct and ordain as an essential condition of my bequests *aforsaid in favour of my said five sons and of their widows respectively*, that all the estate, interest, and property, whether by way of usufruct, annuity, or otherwise, and every part  
 20 and portion thereof which my said sons respectively or their widows respectively shall or may in any wise take or receive or be entitled to take or receive under this my will, and also all interest or revenues, or income in any wise to arise therefrom, shall be and remain for ever exempt from all liability for the debts present and future of them or any of them, and shall be absolutely insaisissables for any such debts, or any other cause whatsoever, and shall be, and shall be held and taken as being, to all intents and purposes, *legs d'aliments* by me hereby made and granted in favour of them and each of them, and shall moreover be insusceptible of being by them, any or either of them, assigned or otherwise alienated for any purpose or cause whatsoever.

30 Nineteenthly. I further will and direct, that in case any party or parties whomsoever at all interested in this my will shall ever hereafter in *any manner or way contest the same, or oppose or obstruct the execution thereof, or of any clause, matter, or thing therein contained*, then and in that case each and every party so contesting, opposing, or obstructing shall absolutely and for ever *forfeit and lose all and every the bequest, devises, benefits, and advantages which they he or she might otherwise claim under this my will*, and the same shall, *ipso facto*, determine and revert to my estate, and all and every of the provisions of this my will, in so far only as they may tend to grant or secure the same to such party, shall become and be utterly null and void and  
 40 *non avenues*. And further in case of any contestation of this my will, or of any opposition or obstruction to the execution thereof, I hereby expressly authorise and direct the said trustees to appropriate and expend from my estate all such sum and sums of money as in that behalf may be requisite for the maintenance and full enforcement thereof in due course of law.

Twenty-secondly. I hereby constitute and appoint my said three trustees hereinbefore named, and the survivors and survivor of them, to be executors and executor of this my last will and testament, and *I hereby give and transfer*

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And lastly. Provided always, and I hereby direct and authorize my dearly beloved wife, by any deed and instrument in writing to be by her *signed, sealed, and delivered in the presence of and attested by three credible witnesses,* 10 to nominate, substitute, and appoint any other fit person to be a trustee, executor, and universal fiduciary legatee and devisee of this my will *in the stead and place of my said wife from and after her decease,* and when such new trustee and executor shall be nominated and appointed as aforesaid, all the trust estate, moneys, and premises, then subject to the trusts and provisions of this my will, shall be effectually assigned, transferred to, and vested in the said surviving and continuing and new trustees, to be held by them and the survivors or survivor of them upon the trusts of this my will, in all respects as if such new trustee had been originally appointed by this my will, and the 20 person so to be appointed trustee as aforesaid shall have all the powers and authorities by this my will vested in my said dearly beloved wife in whose place and stead he shall be substituted as aforesaid.

After quoting part of these sections of the will the Plaintiffs' claim sets forth that Dame Mary Ann Elizabeth Molson, by acte before Doucet, notary, the 13th May 1861, appointed Joseph Dinham Molson after her decease to be a trustee and executor and that certified copies of the will and of said appointment were deposited with the Bank, and with William Molson, one of the executors, who was the President of the Bank.

That Mrs. Molson then died, about the 5th of May 1862. That on the 30 27th March 1871, William Molson and Alexander Molson rendered a final account and on or about the said date, deposited it with W. A. Phillips, notary, and that after such account had been rendered, all powers of sale by the executors ceased, and any sale or alienation by them of any portion of the estate was absolutely illegal. That amongst other assets of the estate were 3200 shares of the capital stock of the Molsons Bank. The declaration then sets up the following transfers: The 27th March 1871, 640 shares to the estate George E. Molson, 27th March 1871, 640 shares to Joseph Dinham Molson, 5th April 1871, transfer (pretended sale) to Alexander Molson, 640 40 shares, without specifying that such transfer was made under the will and subject to its provisions as being substituted property inalienable and insaisissable. The Plaintiffs then allege that after such declaration the Bank was not justified in allowing the transfer. That on the 11th May 1871, they transferred to Samuel E. Molson 640 shares. That the shares transferred to Alexander Molson were the property of the substitution and were insaisissable and inalienable, and that the transfer was illegal and *ultra vires* of the executors. That the Bank knew that the 640 shares so transferred to Alexander Molson

were his shares in his father's estate and were substituted and were guilty of gross negligence and fraud in permitting the transfer to Alexander Molson individually by two of the executors, without the concurrence of Joseph Dinham Molson. That consequently Alexander Molson was enabled to deal with the shares, and they have now been sold or transferred. That on the 28th September 1878, when the Bank was still in possession of a portion of the stock, it was protested by Alexander Molson as curator to the substitution and notified of the illegality of the transfers. That Alexander Molson is personally insolvent. That the shares are worth \$60,000 and the accrued dividends and interest \$70,000. The declaration then sets up the appointment of Stewart and his authorization to institute the action, and that Herbert Molson is one of the substitutes.

10

To this action the Defendants pleaded a dilatory exception and also an exception to the form, of which the dilatory exception was dismissed but with costs in favour of the Defendants' attorneys and the exception to the form dismissed with costs against them (Mr. Justice Mathieu).

The Defendants then pleaded to the merits as follows:—

1. A plea alleging *lis pendens*, inasmuch as 160 shares of the stock claimed was already claimed in another action then pending in this court.

20 2. A general denial and special plea to the merits, by which it was alleged:—

(a) That the alleged institute under the alleged substitution was living, and a consenting party to the disposal and transfer of all the shares which at the time of his death stood in the name of the executors of the late Hon. John Molson.

(b) That the Plaintiff Stewart and Plaintiff H. S. S. Molson had not any vested right to or interest in the shares, nor any right to the dividends or any sum in lieu thereof, even if the same formed part of the Honourable John Molson's estate.

30 (c) That there are other substitutes living who are not now parties to the case.

(d) That the Plaintiff Stewart and H. S. S. Molson have not been legally authorized to prosecute the present action.

3. A second plea to the merits.

(a) That Alexander Molson was a party, personally and in his qualities, to all that was done and is estopped from maintaining the conclusions of the action.

(b) That there is a misjoinder, of parties, in that it does not appear what part of the shares or stock or interest or dividends any particular Plaintiff is entitled to claim, and they are not by law entitled to claim jointly.

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(c) That there was no substitution which ever affected any stock or shares in the Bank, nor was any such ever created by the will in favour of the children of the late Alexander Molson.

(d) That no property of the estate subject to any such substitution was ever invested in the Bank stock, nor were the legal formalities necessary to subject such stock to any such substitution ever complied with.

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(e) That Mrs. Molson died on the 5th May 1862.

(f) That the only shares entered in the books of the Bank in the name of William Molson and Alexander Molson, executors estate Hon. John Molson, were 3,200 which under the will the executors had full power and authority to sell, assign, transfer or dispose of, and that on the 5th April 1871, William Molson and Alexander Molson required the Bank to receive from them a transfer to Alexander Molson of 640, shares by writing *sous seing privé* entered in the transfer book of the Bank, which transfer Alexander Molson then and there accepted.

(g) That Alexander Molson by the will and by virtue of the premises, was the legal holder and owner of the 640 shares and was not at any time the apparent holder or owner of any other shares of the Bank which had been or purported to be part of the Hon. John Molson's estate.

(h) That consequently Alexander Molson became the absolute owner of the 640 shares of the stock and at different times he disposed of them upon the books of the Bank in the manner provided by law, the Bank being exempted by law from any liability to see to the disposal of the proceeds of the stock, if the same were ever subjected to any trust, which the Bank denies.

To these pleas the Plaintiffs answered, admitting the *lis pendens*, and made a general answer to the first and second pleas, and to the last plea, alleging that the shares were always the property of the substitution and that the trusts established by the will were established subject to the substitution and the power of the executors appointed in the will, which was limited to sale for investment only and to a period of ten years, and that Alexander Molson had never possession of the stock otherwise than as institute.

The Defendants made a general replication.

The case was tried at enquête and merits, before Mr. Justice Taschereau, before whom all the witnesses were examined, with the exception of Joseph Dinham Molson, whose deposition was taken out of court by consent.

It will be seen from the foregoing statement of the contents of the Hon. John Molson's will that it is of a peculiar nature, the form of trust and the general construction of the will being borrowed from the English law, whilst it was intended to create over certain of the property of the deceased a substitution in the ordinary way. This substitution however so far as it affected any particular property *in specie* was liable to be cleared away by the trustees on their exercising their discretionary power of sale. The testator begins by bequeathing the property in trust to his brother, his wife and his son, or the survivor or survivors of them and the heirs and assigns of the survivor, upon trust to hold and manage for ten years from his death, but if at the expiration of that time, his wife was still living and had accepted the provisions of the will in lieu of the provisions of her marriage contract, then they were to continue to hold until a year after her decease. As to the termination of the trust, a trust can be placed upon no higher or other ground than that of a simple mandate, and the trustees were not precluded from continuing the mandate after the ten years to the extent of doing such things as were properly



necessary to terminate the business of the trust: the testator himself contemplated the trust coming to an end at a later period than ten years, for he directs the trustees to deliver up the residue and account for the same to the residuary legatees *at or so soon as practicable after the term of the said trust.*

Under clause eleven he gives the surviving trustees power to appoint a co-trustee. By clause twelve, he provides for certain annuities during the continuance of the trust. By clause thirteen, he directs that at the expiration of the term herein-before limited (he does not again use the expression "end of ten years" nor could he reasonably use it, because he had extended it by the words "so soon as practicable after the expiry of the term" so he says "at the expiration of the term herein-before limited") the residue shall fall to and become the property of his sons in equal shares, with substitution in favour of the children of such sons subject to the usufruct of the son's widow if living, so long as she remain his widow, and he gives power to each of his sons by will to alter the proportions as appointed between the grandchildren, and even to exclude any of the grandchildren, notwithstanding anything contained in the will. Clause 16 deals with the distribution, and he then uses the words, "*As soon as it may be practicable after the expiration of the term herein before limited for the continuance of the trust, the trustees are to apportion and divide*"

10 "the residue among the parties entitled thereto." They are given discretion as to the nature of the precautions they are to take, it being provided that they shall take care so far as may be possible and in such manner as they deem best against the risk of the capital being lost and further if in the apportionment they think it necessary or even advantageous to sell any part of the residue.

By Clause 18 the testator directs as an essential condition of the bequests in favour of his sons and their widows that the interest which the sons or their widows may be entitled to shall be exempt from liability for debts and unseizable, and should be considered to be an alimentary allowance and should be insusceptible of being alienated by them. This clause involves two

30 provisions, a provision by which the interests of the sons and their widows are unseizable and of an alimentary nature. This is a prohibition which the testator was entitled to make by his will, and it was this part of the clause that was principally in question in the case of Carter and Molson hereinafter referred to. In the present case, the question of the alimentary nature of the bequests or of their being unseizable is not in issue but the only question raised here being as to whether that part of the section prohibiting alienation has any greater effect than the clause creating the substitution, that is to say, does it by prohibiting a full alienation by the institute in effect create a substitution or reiterate the provisions of the will which have already created

40 one, or does it prohibit the institute himself from alienating his interest in the estate during his life, subject to the rights of the substitutes. This question involves that of whether under our law a property can be given absolutely to any one coupled with the prohibition to him to alienate it. By the last clause of the will the testator's wife by an instrument attested by three credible witnesses was authorized to appoint a trustee and executor and universal fiduciary legatee in the place and stead of the testator's wife from and after her decease.

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The question arising under this section is as to whether Capt. Joseph Dinham Molson ever became a trustee and executor. A notarial deed of deposit is produced by which it appears that a written instrument purporting to be the appointment of a trustee and executor under this section was produced; but the signatures were not proved, nor was it found that after Mrs. Molson's death Capt. Molson ever made any effort to assume his position as an executor. On the contrary he says himself that he went to see Mr. William Molson before his mother's death, but it does not appear that he ever saw him afterwards, and for reasons stated in his deposition, it may be well understood why he did not act as an executor. The whole series of deeds of partition and accounts show that he took no such position. 10

The first question to which the Defendants wish to call the attention of the Court is the nature of the bequest to the executors and trustees. The general powers of the executors merely extend to a possession of the testator's property, with certain powers as to sale, but it is a well-known principle that the testator may if he please increase the duration of the executor's powers and extend his seizin and possession of the property for an undeterminate period and give him more or less absolute powers of sale or disposal of the property without consulting the legatees, and the most extensive manner in which such powers as these are extended is that adopted from the English law, 20 by which the whole of the property is bequeathed to the executors or to trustees, who are thus made not the mere executors of the testator's will as to properties bequeathed to others, but become themselves the universal fiduciary legatees and devisees of the testator and are charged in the same manner as an institute might be charged with a duty upon the happening of given events at the expiration of a given time, of handing over the property to others. In other words, they are placed in the position of the legal owners of all the property bequeathed and they are directed after the expiration of a certain time, to transfer it to certain other people who are to be the beneficial owners. They are given by paragraph 10 special power to sell all real estate not 30 specifically bequeathed which they deem it advantageous to sell, and by Clause 16, when after the expiration of the ten years, they come to make the apportionment, they are again given particular and express power to sell any part of the residue and to apportion their proceeds; and Clause 10, par. 2. provides that upon all questions touching the sale and disposition of any part of the estate, the concurrence of any two of the trustees, of whom William Molson was to be one, should be sufficient. The extensive nature of the discretion thus entrusted to the trustees is made apparent by Clause 19, which provides that in case any one interested in the will should ever thereafter in any manner contest the will or oppose or obstruct the execution of it or of 40 any clause, matter or thing therein contained, he should forfeit his interest, and the trustees were authorized to appropriate and expend from the estate whatever moneys might be necessary to resist any such opposition or obstruction.

It is submitted that a perusal of these clauses sufficiently shows that the testator did not intend to substitute in favour of any of his son's families any specific assets. He left his executors generally free to sell the real estate as

the trust went on, and at the end of it, free if they saw fit to sell real estate or any other kind of assets, and to apportion the proceeds, provided always that William Molson, if living was a concurring trustee, and any one of the beneficiaries who had objected to the course which Mr. William Molson chose to pursue in this matter would have been liable to have forfeited his interest.

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Before going into a statement of facts, the Defendants would refer to an argument which was urged in the Court below with regard to the rights of substitutes. It was contended that the substitutes under an ordinary substitution had in some way vested interest in the substituted property and that the curator was entitled to possession. This contention the Defendants submit is entirely unfounded. The bequest of property to an institute with a charge to deliver over differs essentially from the bequest of a nu-proprietaire subject to usufruct, and the essential particular in which it does differ is that the ownership of the property in the case of a substitution goes to the institute in as full and complete a manner as possible. He is the owner until the event upon which the substitution depends happens in as full and complete a sense as if there were no substitutes, and if the event should never happen or become impossible, his position as regards ownership is no more extensive than it was before, but he is relieved of the possibility of the stipulated event happening which is to deprive him of ownership. The substitutes until the opening of the substitution have nothing but the hope of succeeding. They are not entitled to any management or control of the property.

On the other hand, in the case of a usufruct, the property vests at once in the nu-proprietaire, subject to the rights of the usufructuary to the enjoyment. If then, the institute is the owner, it is submitted to be clear that he may sell the property absolutely, the purchaser taking the risk of being deprived of it upon the happening of the stipulated event, and if the stipulated event becomes impossible, the purchase requires no further evidence or assurance to perfect his title. Thus it is submitted that if a farm be bequeathed to A with a substitution in favour of B upon B's attaining the age of twenty-one years, and A sells this farm to C, C would acquire the full ownership of the property, subject to B's claim if B arrived at the age of twenty-one years; but if B died before arriving at the age of twenty-one years, C would remain the absolute owner free from the possibility of the condition happening. The Respondent apologizes for discussing an elementary matter of this nature at such length. The argument however in the Court below turning in part upon a misconception of this point justifies the Respondent in so doing.

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## Evidence.

The burden of proof in this case was upon the Plaintiff. Witnesses were examined to prove the value of the Molsons Bank stock and dividends paid, about which there was no dispute. Mr. Elliot, the Manager of the Bank, examined as to the entries connected with the shares of the Bank stock belonging to the estate late Hon. John Molson, states that on the 11th May 1866, a journal entry was made as follows :

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Declaration number twelve, dated eleventh May, eighteen hundred and sixty-six, Honourable John Molson debtor to Executors, namely, William and Alexander Molson for transmission three thousand two hundred shares of stock of fifty dollars each, one hundred and sixty thousand dollars. The entry was made upon a declaration which he states was dated the eleventh May 1866, and believes to have been made by Phillips, notary. It is not produced. He is then examined as to the trustees of these 3,200 shares made by the executors, which he thinks are as follows:

On the 5th April 1871, 640 shares transferred by William Molson and Alexander Molson, the executors of the estate late Hon. John Molson, to W. H. Kerr, tutor, and Alexander Molson, trustee. On the 5th April 1871, the same number of shares was transferred by the same people to Alexander Molson by transfer in the following terms: The margin of the transfer reads as follows:

Transfer number six hundred and sixty-eight, number of shares six hundred and forty, amount \$32,000, executors of the estate of the late Honourable John Molson to Alex. Molson. Instalment book folio , stock register folio 27-381; and the body of the transfer reads as follows:

For value received from Alex. Molson, of Montreal, we do hereby assign and transfer unto the said Alex. Molson, 640 shares, on each of which has been paid \$50 currency, amounting to the sum of \$32,000 in the capital stock of the Molsons Bank, subject to the rules and regulations of the said Bank. Witness our hands at the said Bank this 5th day of April 1871, "and it is signed 'Alexander Molson and William Molson, executors estate late Hon. ' John Molson,' in brackets on the right-hand side, and the acceptance of the transfer is as follows:"

I do hereby accept the foregoing assignment of six hundred and forty shares of capital stock in the Molsons Bank assigned to me as above mentioned at the Bank on this fifth day of April 1871. (Signed) Alex. Molson.

The next transfer is a transfer in similar terms by the same people of the same amount of stock to John D. Molson, one of the sons of the late Hon. John Molson. There was also a transfer made by the same people of the same amount of stock to Samuel E. Molson, tutor and trustee and John Crawford, trustee. Mr. Elliot is unable to say personally what documents or vouchers were submitted in connection with these transfers, but this matter was a matter concerning the President of the Bank and the documents connected with it were in the hands of the president and other officials. Mr. William Molson, one of the executors, was President of the Bank, in 1859, and he remained president until 1875, when he died. Mr. John Molson was accountant in 1859, and remained accountant until 1870. Dividends were paid to the executors up to the time of the transfer of the stock. Upon cross-examination, he stated that he did not have charge of the transfer department of the Bank at the time these transfers were made, and could not tell who was consulted about the transfers, or whether there was a will attached to the declaration, and had no knowledge of the matters at the time they took place, nor has he now, except what he has acquired since by hearsay. The transfer

he says is made upon the transfer book of the Bank in the form provided by the statute. RECORD.

Mr. F. Wolferstan Thomas, the general manager of the Bank, states that he has been manager since June 1870. He knows nothing about the proceedings followed in the matter of stock transfers, it not being within his cognizance. In 1866, the late Mr. William Molson was president of the Bank. No. 57.  
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Mr. William Robb, City Treasurer, states that he believes Mr. Alexander Molson to be insolvent; that he is indebted to the city for taxes. Upon cross-examination, he says that the taxes are due upon property on St. James and Sherbrooke Streets assessed in Mr. Alex. Molson's name, the assessed value of which would amount altogether to about \$44,000. Upon re-examination witness turns out to be uncertain in whose name the property is assessed.

Mr. Simpson, stockbroker, also considers that Mr. Alexander Molson is insolvent. Upon examination, he says he knows nothing about Mr. Molson's position or property, nor Mrs. Molson's position or property. He believes he receives the rent of property on St. James Street. Upon cross-examination he admits that his opinion as to his insolvency is of no value.

Mr. Alexander Molson himself tendered his evidence which was objected to on the ground that he was one of the Plaintiffs, and the evidence was ruled out.

Mr. E. W. H. Phillips, notary, produced an *acte de depot*, which purports to be an *acte de depot* of an account made by Samuel E. Molson, Joseph D. Molson and W. H. Kerr, in his quality of tutor. He says that he can find no other *actes de depot* of accounts.

This is the only evidence attempted to be produced of the rendering of any account whatever by the executors of the late Hon. John Molson. The account was not in any way in proper form does not purport to be an account of trustees and is not signed nor was it deposited by the trustees nor were any signatures proved.

The witness is then examined as to the existence of several deeds of transfer and conveyance from the executors of the late Hon. John Molson, and he refers to several, one of the 11th May 1871 from the executors and trustees to Samuel Molson and John Crawford, another from the 25th May, from the same to Mr. John Molson, another of the 27th March, from the same to W. H. Kerr and Alex. Molson and another on the 27th March from the same to Joseph D. Molson and another on the 15th June 1871 from the same to Mr. Alexander Molson, by the deed and by other exhibits it appears that he acted not only as Institute but also as the tutor of his minor children and the curator duly appointed to the substitution.

This closed the evidence of the Plaintiffs.

The Defendants examined Mr. Joseph Dinham Molson, from whose evidence it appears that he never acted as an executor or trustee of his father's estate. He saw his uncle, William Molson, during his mother's life, and his uncle William refused to deal with him as executor, or to talk business with

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him, and it does not appear that they ever discussed any business afterwards. Mr. Joseph Dinham Molson had been in the army in India and suffered from sunstroke, for which reason he had left the army. It does not appear that after his mother's death he made any effort to act as executor. He was a party to the transfers of the shares in which he was himself interested and knew that they were made in connection with the general division of the estate, and raised no objection.

Mr. Edmund Barry, one of the Deputy Prothonotaries, produces a copy of an act of tutorship dated the first March 1871, by which Mr. Alexander Molson is appointed as tutor to his minor children, and an acte of curatorship by which Alex. Molson is appointed curator to the substitution on the 2nd of March 1871. He also produces the pleadings in an action No. 949 of the Superior Court in which the present Plaintiff and Defendants are parties, by which it appears that there is *lis pendens* as to 160 shares. 10

Mr. George W. Simpson, who states that Mr. Molson has eight children, all of whom might have a possible claim to this substitution, and all but two of whom are of age. Mrs. John Molson died in May 1862.

Mr. E. W. H. Phillips, who states that from the death of the late Hon. John Molson to the end of 1875, there were some thirty odd deeds executed on behalf of the Hon. John Molson's estate, in none of which Mr. Joseph Dinham Molson acted. There is a deed of sale from William and Alexander Molson, in their quality of executors, to Joseph Dinham Molson, and again another deed, and another deed which he executed with the same parties, in which he represented as tutor certain minor children; and there is a sale on the 22nd Nov. 1871 to himself individually. 20

The facts in proof therefore with regard to the division of the estate and to the transfer of the six hundred and forty shares are these, that the executors and trustees in apportioning to Alexander Molson his share of the estate, did not apportion specifically any shares of Molsons Bank stock, no such stock appearing in the schedule to the deed of transfer. To this deed Mr. Alexander Molson was a party personally and also in his two capacities of tutor to his minor children and curator to the substitution and it is not now sought in any way to set aside this deed. As to the stock, the bare facts are that six hundred and forty shares of the stock were transferred from the trustees to Mr. Alexander Molson. It was transferred upon the books of the Bank, which was the only legal way in which it could be transferred. (18 Vict., Chap. 202, Sec. 19, and 27 Vict., Chap. 42, Sec. 1863). There is no evidence whatever to show what precautions if any, the executors took to prevent the property intended by them to go to the substitutes from being alienated. It is not shown whether the six hundred and forty shares were transferred by them to Alexander Molson as part of his share in the estate nor are they connected in any way necessarily as an inference from the evidence. No attempt is made to show what the real nature of the negotiations was by which Alexander Molson and the executors arrived at a decision as to what was to constitute his share of the substitution, or as to the transfer to him of the six hundred and forty shares. 30 40

Upon the evidence so made, the Respondents submit.

1. The evidence and admissions show that there is *lis pendens* in this case between the parties as to 160 shares on the capital stock of the Bank, and that the matters in issue in this cause are therefore limited to 480 shares.

2. The will of the late Hon. John Molson gives Alexander Molson power to exclude any of his children. Herbert S. S. Molson, as one of the instituted, as stated before, has no vested interest in the substituted property and even if he had such vested interest it would not be to any determinate part of it. Five of the other substitutes are of age and are not parties to the proceedings.

10 These objections were raised *in limine* by the Defendants, and as the Plaintiffs have not seen fit to make these other substitutes parties to the case, it is submitted that the Court must consider that the substitution is not represented in this case otherwise than by the curator. The position therefore is that the curator and Mr. Molson claim 480 shares to be part of the property of the substitution, whilst Mr. Molson claims that he is entitled to have interest in these shares since the time that he himself alienated them.

3. It is submitted, upon the authority of Renaud and Tourangeau, 7 L. C. J., 238, Mr. Justice Meredith's remarks, which were adopted *in extenso* by the Privy Council, 2 L. R., P. C., p. 4, 12 L. C. J., p. 90, that  
20 a mere prohibition to alienate, if it does not amount to a substitution, is a matter of simply advice, and does not prevent an alienation. In this case, the testator before mentioning the prohibition to alienate, has already created a substitution. It can hardly be considered therefore that this prohibition does amount to a substitution. If it does, it must have been intended to have created a substitution subsidiary to the substitution in favour of Mr. Alexander Molson's children in favour of the legal heirs of the testator generally. If so, it would not alter Mr. Alexander Molson's position as Institute and would still leave him free to alienate his own interest in the property, and if not it is a mere advice and not binding.

30 This has been decided in the cases of McIntosh and Bell, 12 L. C. J., 121. Pouliot and Fraser, 3 Q. R. L., 349, and is also laid down in Augeard, Vol. 1, chap. 37, page 360, and Bourjon, Vol. 2, Title 5, No. 40. Even therefore if the stock of the Bank was subject to the substitution, and the substitution is not yet opened, it is submitted that Mr. Alexander Molson might alienate all the substituted property, subject to the future rights of the Institute. It is not a question of the application of the maxim as to the possibility of a party pleading his own fraud or even of the doctrine of estoppel, which as laid down by the Supreme Court in Ball and McCaffrey, Supreme Court Reports, Vol. 20, page 3, is that where a party entitled to certain rights acts in his dealings with  
40 any one inconsistently with such rights, and thereby knowingly induces that other one to alter his position or submit to obligations or liabilities from which he otherwise would have been free, or to do that from which he might otherwise have abstained, that is evidence of renunciation or abandonment of his rights; but rather that Mr. Alexander Molson, even if this stock was substituted stock, as the Institute was entitled to the possession of it, was entitled to have it stand in his own name in the books of the Bank, and that when the executors

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executed the transfer to him of the stock, even if substituted, the Bank had no right to inquire into what precautions if any the executors had taken to preserve the rights of the substitution, but rather would have been compellable by mandamus to transfer the stock; that the stock being thus transmitted into Mr. Alexander Molson's name, as Institute he became entitled to dispose of it as he saw fit, subject to the rights which anybody might have on the opening of the substitution, which have not yet happened.

If therefore it be established that Mr. Alexander Molson had the power to alienate even substituted stock, and that the rights of the substitutes to any control of it do not arise until such time as the substitution opens or he is declared dechu of his rights as Institute, it is clear that so far as the curator's interest in the case is concerned, his action at present is premature and that Mr. Alexander Molson's interest in the stock has been alienated. 10

In the Court below, the case of Carter and Molson in the Privy Council and the cases of Muir and Holmes against Carter in the Supreme Court, were cited as contrary to this position, but it is submitted that they are clearly to be distinguished. In the Privy Council case, the Plaintiff had a judgment against Alexander Molson and he had seized in execution rents and dividends. The dividends in question were claimed to have been purchased with the moneys of the substitution and it was not shown by the evidence that this was not true. The matter therefore turns upon the clause exempting from seizure and the Privy Council held that the rents were exempt from seizure but that the dividends were not. But it was held that the substitutes had no legal or direct interest in them, that they might have resisted the seizure of the corpus of the shares or property which might have affected their ultimate rights, but as to dividends, they had no interest. In the case of Muir and Holmes and Carter, the question related to the matter of 148 shares taken in execution by Carter, which shares were claimed to be the private property of Mrs. Molson or part of stock purchased with the funds of the substitution. This being proved to the satisfaction of the Court, the oppositions were 30 maintained either upon the ground that the stock was the property of Mrs. Molson or on the ground that if the property of the substitution or purchased by its money, it was unseizable.

4. Even if it be assumed that the curator has a right to sue by way of conservatory process before the opening of a substitution, in this case the Plaintiff's declaration shows that the particular shares which are claimed to have been substituted being long since dissipated, and no attempt is made in this action to trace them nor is it shown that these particular shares in specie ever were substituted. The Plaintiff, in support of their claim, cite the case of the Bank of Montreal and Sweeney, in which it was held that where parties have dealt with trust stock, they may be liable to make it good if they had notice of the trust and that they could acquire no better title than the trustee was able to give by his powers under the trust. This rule comes well within the ordinary principles of law, by which purchasers of property, whether stock or of any other kind, with the exception of certain specified instances, such as purchasers at judicial sales and auctions in market overt, are held to get 40



no better title than their vendor had. If they chose to deal with the person in apparent possession, after knowing that he holds the property in trust, it is for them to see whether the trust in any way limits the general powers of the trustee. This is the law as laid down by the Privy Council in the case of the Bank of Montreal and Sweeney, 12 L. R. H. L. and P. C., 617.

Duggan *v.* London and Canada Co., 20 Sup. Ct. R., p. 431.

France and Clark, 26 L. R., C. Div., p. 257.

Colonial Bank and Williams, 15 L. R., H. L. and P. C., 267.

These cases, it is submitted, have no possible application in the present case. In the first place, the Bank was not in the position of a party buying or selling stock, but merely of a person bound by law to keep a register which constituted the title to certain incorporeal movables. The Bank has no interest at all in the transfer of its own stock, being neither the richer nor poorer by it, and it is submitted that the intention of the legislature has uniformly been to protect the corporations against any possibility of loss exactly in such cases as the present. It is true that there is a case in which a Bank was held liable to see to the execution of a trust with regard to its stock (*Lowry v. Commercial and Farmers Bank*, Taney's decisions, page 318). This was a case decided in the United States, where the English law prevails, and where in the absence of statute, any person having knowledge of a trust is affected by it and bound by the consequence, if he neglects. This matter has been the subject of several decisions in England and of several statutes.

By the effect of 7 Anne, c. 7, ss. 12 and 62 and 1 Geo. 1 Stat. 2, c. 19, ss. 9 and 12, Bank of England stock was made personal estate and was to go to the executors or administrators, the same was also applied to annuities. The Bank had to record the wills and trust deeds affecting these.

The question naturally arose were the Bank liable to see to the trusts.

In *Hartga v. Bank of England*, 3 Vesey, Jr., p. 57, S. an executor had a right by the will to pay himself a certain amount out of certain stock and the balance of proceeds going to a substitution. Bill against the Bank to replace the stock if there should appear to be any deficiency.

The Lord Chancellor said: "It is perfectly clear that the Bank must have permitted S to transfer to his own name. . . . When once it was got into his own name he might put it in any name. . . . The consequence would be exceedingly alarming if in all cases where there is a legacy in trust the Bank is to take notice of the execution of the trust." Bill dismissed as against the Bank.

*Bank of England and Parsons*, 5 Vesey, Jr. p. 665. The Bank brought a Bill to restrain the transfer of trust stock on the ground that a transfer should not be permitted by the party entitled to the life interest. The Bank was ordered to make the transfer to pay costs.

*Bank of England and Lunn* 15 Vesey, Jr. p. 58. The Lord Chancellor said: "The Bank could never be held as trustees."

At the period of these decisions joint stock companies were hardly known; but in 1845 the Imperial Companies Clauses Act 8 & 9 Vict., c. 16, s. 2, which must have been modelled on existing charters contained a provision in

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“The Bank shall not be bound to see to the execution of any trust express, implied, or constructive to which any of the shares of the Bank are subject.” The French version uses the word “fidéi-commis.”

Other English Acts *e.g.* the Act of 1862 s. 30 uses a modified form of this provision and says :

Sec. 30. “No notice of any trust expressed, implied, or constructive shall be entered on the register or be receivable by the Registrar.

Kinnersly V. C. in *Binney v. Ince Hall Co.*, 35 L. J. N. S. Chy. D. 368 <sup>10</sup> distinguishes between these two forms of enactment saying, when dealing with a provision similar to Sec. 30: “The effect of that clause is not that the Company is not to be affected by a trust . . . but that the Company “is not to be affected by any notice of any trust.”

Clearly the charter of the Bank is the more extensive protection of the two. For if the Bank be not in any way bound to see to the execution of any trust even an express trust to which it knows its shares to be subject *a fortiori*, a notice of the fact would have no effect whatever, whilst under a legislation which merely forbids the recording of notices of trusts it might not inconsistently be argued that if the trust was clearly known to and accepted by the <sup>20</sup> Company it would be bound.

However in *Soc. General v. Tramways Union* 14 Q. B. D. p. 425, it was held that the Company was not affected by the trusts.

Brett M. R. says, p. 439: “If they are to be turned into trustees of necessity they are bound to take notice of trusts. . . . It seems to me that the Act of Parliament meant that the Company need not take notice in any way of trust. Lindley L. J., p. 451. The interest of a shareholder is a legal, not an equitable interest and this legal interest is capable of legal transfer.” He then considers the effect of a notice by a *cestui-que* trust whether after such notice the Company could refuse to allow the registered <sup>30</sup> holder to transfer. He concludes that Sec. 30 relieves the Companies.

In II. App. Cases, p. 20 :

Earl Selborne says: “There was no obligation on this Company to accept or preserve any record of notices of equitable interests or trusts if actually given or tendered to them and that any such notice if given would be absolutely inoperative to affect the Company with any trust.”

Lord Blackburn, p. 41. “I do not doubt that the Judges of the Court of Appeal put the right construction of the Companies Act 1862 as to the notices of trust &c.” 40

Lord Halsbury concurred with Lord Blackburn.

In the case of *ex parte* The Mexican Santa Barbara Co., 24 Q. B. D. p. 613, Lord Esher M. R. p. 618 says: “The law has given the Company the right to say: We do not care whether you are a *cestui-que* trust or not; if you are, we have the right to take no notice of you.”

Lord Coleridge, p. 616. “It seems to me extremely important not to throw any doubt on the principle that Companies have nothing whatever to do

“ with the relations between trustees and their *cestui-que* trust in respect of the shares of the Company . . . . . they can only look to the man whose name is on the register.”

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It is to be observed that the actual deed of partition by which Mr. Alexander Molson's share in the estate was set aside, and which deed he was bound by the will to acquiesce in, under pain of forfeiture of all his interest in the estate, did not purport to assign to him any stock in the Molsons Bank, and it is submitted that inasmuch as he was a party to this deed, both personally and in his quality of curator to the substitution and tutor to his minor children, he cannot now take up any other position without that deed being set  
10 aside, which is not sought to be done in the present instance. For the sake of argument, however, even if it be assumed that the statements in the deed could be attacked and that the proof is sufficient to show that the 640 shares transferred to Mr. Alexander Molson on the 15th June 1871, were transferred to him by way of a partition of the estate and did form part of his share, the Respondents would submit that they were not bound in any way to inquire under what circumstances the executors were making the transfer to him. The stock was standing in the names of the executors in trust. The Bank was not bound to see to the execution of the executors trust. There was only one  
20 legal means by which the executors could transfer stock to Mr. Molson at all, and that was provided by section 2 and section 19 of the Bank's charter, as amended by 27 Vict., Chap. 42, and that was by a transfer upon the books of the Bank, in a form specified in a schedule to the charter, and this was done. Even if the Bank knew of the Hon. John Molson's will, and had paid particular attention to the terms of it, no conclusion could be arrived at from a perusal of it, except that the executors had the power either to sell the 640 shares if they chose or they had the power to transfer them to Mr. Molson as institute and to ask or abstain from asking any security from him just as they felt disposed, and it is submitted therefor that even if the stock was transferred to Mr. Molson  
30 as part of his share in the estate and even if the executors had not exacted from him the same security as they had in the case of other shares, that nevertheless it was within their discretion so to do, and the Bank had no right to object.

5. Under the law in force at the time of the testators death, there could be no substitution of moveables. Under the discisions in the cases of Hutchinson and Gillespie, 4 Moore P. C., p. 378, and Symes and Cuvillier, 5 L. R. H.L. & P. C., p. 138, no ordinance of the French King was valid in this country, except it was registered in the Superior Council at Quebec, that is to say, no ordinance subsequent to the establishment of the Superior Council, nor was the French  
40 law as it existed in 1663 altered by jurisprudence founded on ordinances not registered. The Hon. John Molson having died before the Code came into force, and the rights of the institutes to any particular assets of his estate having to be decided by the law in force at the time of his death, in order to decide whether Mr. Alexander Molson, even assuming that this particular stock formed part of his share in the estate, was the absolute owner or the owner subject to a substitution, we have to decide what the law was in 1663,

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By Sec. 124 of the ordinance of 1629, commonly called the Code Michaud, substitutions of moveable property, with exception of precious stones, were prohibited.

Isambert. *Anciennes Loix*, Vol. 16, p. 262, sec. 125.

“Voulons aussi que les dis fidéi-commis ne puissent avoir lieu pour le regard des choses mobilières si ce n'est pour pierre précieuses de fort grand prix.”

The policy of this prohibition is clear. Moveable property cannot be followed. Immoveable property on the contrary did not require to be traced, and therefore the rights of the substitutes upon it could always be enforced, but the possession of moveable property being as a general rule co-extensive with its ownership, to have allowed the substitution of moveable property would naturally lead to difficulty. Even the legislation of 1747 did not permit the unrestricted substitution of moveables, but required by section 4 that an emploi or investment of the proceeds of the moveable property substituted should be made, and that moveables could not be charged with any particular substitution, unless the testator directed that the property should be sold and the proceeds so invested, and the only exception made to this rule applied under sections 6 and 7 to chattels and cattle used with the land and the furniture of chateaux and under sec. 8, any substitution directing the preservation in kind of any moveables except these were null, and he upon whom such a condition was imposed possessed freely and without liability. Under sec. 11 of Title 2, if no direction was given as to the investment, the money had to be expended in buying land and constituted rents. In the case of Blanchet and Blanchet, 11 L. C. R. p. 204, and Joubert and Walsh, 11 R. L., p. 334, these questions were considered and the judgment of the Court of Queen's Bench and the judgment of Mr. Justice Mathieu have both decided that anterior to the code there could not legally be in this country a substitution of moveable property. This has also been the decision of the learned Judge who heard this case in the Court below and the judgment is printed in the Appendix to the present case, to which judgment the Respondents beg leave to refer the Court.

By the statute incorporating the Bank, the shares were moveables, 18 Vict., c. 202, s. 19, reads:

“Les actions du Capital de la dite Corporation seront réputées et considérées être des biens meubles et seront transférables comme tels.”

It is confidently submitted therefore by the Respondents that these particular shares never became affected by any substitution; that it is not necessary for the decision of the case to inquire whether Alexander Molson took them as part of his share in the division or whether he took them otherwise from the executors; it is sufficient that the executors did transfer them to him, that he thereby become the legal owner of the stock, or at all events the legal owner in such a way that no one but the executors and himself could take exception to it, and that being so, he disposed of them according to his own judgment.

It is not necessary for the Bank to discuss whether or not the executors and trustees under the Hon. John Molson's will, fully and properly carried out their trust. It is submitted that it is sufficient for the Bank in defence to the Plaintiff's action to show that the Bank was powerless to prevent the executors from transferring this stock to Alexander Molson; that by the transfer, he became the owner of it, and that even if as between himself and the substitutes, he was legally or morally bound not to dispose of it, the Bank were not liable and indeed were not in a position to see that he carried out his obligations.

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10 The case of Simpson and the Bank of Montreal, it is submitted, has no bearing upon the point, because there the question at issue was the right of a tutor to dispose of the property of a minor, this property being Bank stock which the law of the Province of Quebec requires when it belongs to minors to be dealt with as if it were immoveable property.

On the whole therefore the Respondents submit that the judgment appealed from should be confirmed, for the following amongst other reasons :

1. Because the Plaintiff Alexander Molson is estopped from denying the legality of the transfers made by him.

2. Because the curator has no legal title to the stock or dividends which  
20 he seeks to recover.

3. Because the curator, even if vested with any legal right in the assets, has no action until the institute has been declared dechu of his rights, or until the substitution is opened, neither of which events have happened.

4. Because the deed of partition does not show that this stock was assigned to Mr. Alexander Molson's share in the substitution.

5. Because the deed of partition does show that the full share of the assets was transferred to Mr. Alexander Molson as institute and curator to the substitution which included in full all that he was entitled to without any mention of the stock.

30 6. Because even if the stock was included in Mr. Alexander Molson's share and the transfer upon the books of the Bank made as part of the partition of the property, he as institute would be entitled to the possession, and the Bank were not bound to inquire into the security which he gave against dissipating the property.

7. Because as holder of the stock he became the legal owner.

8. Because the particular shares were not affected by any substitution under the Hon. John Molson's will.

9. Because the shares were not affected by any prohibition to alienate.

40 10. Because Mr. Alexander Molson as the legal holder of the stock, was entitled to transfer the same.

11. Because the Bank, by its charter, is exempt from all responsibility in the matter.

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12. Because it is not sought to set aside the deeds of partition nor is it pretended that the Bank had any profit or advantage by reason of the transactions.

Montreal, 1st March 1893.

ABBOTTS, CAMPBELL, AND MEREDITH,  
Attorneys for Respondents.

(Endorsed) Respondents' factum. Filed 24th March 1893.

(Paraphed) M and D.

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Document V $\frac{1}{2}$ .

Canada, Province de Quebec, District de Montréal.

Cour Supérieure.

*In re Stewart, ès-qualité, et al., and The Molsons Bank.*

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Remarks of  
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Taschereau.

[ Remarques de l'Honorable Juge Taschereau lors de la prononciation du jugement le 6 Octobre 1892.

(L'Honorable Juge fait d'abord l'analyse de l'action, des défenses, des réponses et répliques, et généralement de toutes les plaidoiries, et fait le résumé des dispositions du testament dont il est question dans la cause, puis il donne les  
10 appréciations du tribunal dans les termes suivants) :

La première question qui se présente et qui, si elle est résolue dans le sens des prétentions de la défense, devra mettre fin à cette action, est celle dont je vais d'abord m'occuper.

Le droit antérieur au Code permettait-il la substitution de meubles et de choses mobilières ?

Si j'en arrive à la conclusion qu'une réponse négative doit être donnée à cette question, et si cette conclusion s'impose à mon esprit dans l'étude du droit antérieur au code et de la jurisprudence qui s'y applique, il s'ensuit que le tribunal n'aura pas nécessairement à résoudre les autres questions, très  
20 importantes, il faut l'avouer, qui se présentent dans cette cause.

Si réellement la substitution, telle que créée par feu l'Honorable John Molson, n'a pas affecté les parts de banque par lui léguées et qui sont meubles par le code civil, par la loi qui régit les banques, et par la charte même de la banque Défenderesse, évidemment la présente action n'a aucune base quelconque, car si la substitution n'a pas affecté ces parts de banque, elles sont tombées purement et simplement au lot des grevés qui en sont devenus propriétaires purs et simples sans avoir de compte à en rendre à personne ; la substitution n'a jamais eu aucun droit, par conséquent, sur ces actions, et le transport de ces actions, en date du cinq Avril 1871, enregistré dans les livres  
30 de la banque au nom d'Alexander Molson seul, et les transports subséquents qui en ont été faits à des tiers, doivent être respectés, et sont définitifs à toutes fins quelconques.

Je ne me dissimule pas qu'avant d'en arriver à une conclusion sur ce point, j'ai eu des doutes sérieux, doutes résultant surtout du fait que l'ordonnance de 1629, qui prohibait absolument les substitutions de meubles, n'a pas

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toujours été observée en France, ni même au Parlement de Paris, où pourtant elle avait été enregistrée.

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Si l'on consulte le rapport de la cause *Blanchette v. Blanchette*, rapportée au onzième volume des *Lower Canada Reports*, on verra, à la page 220 de ce volume, une expression d'opinion bien formelle sur ce point par Sir Louis Hypolite Lafontaine. Le savant juge en Chef s'exprimait ainsi: "Il ne résulte pas du Statut de 1801 (introduisant la liberté de tester) que le testateur, en disposant de ses biens, puisse le faire de manière à leur donner une destination que des lois positives défendent de leur donner. Par exemple, une loi d'ordre public, l'article 125 de l'ordonnance de 1629, prohibe la substitution des meubles. Tout individu avait, avant les deux Statuts de 1774 et de 1801, comme il a continué de l'avoir depuis, le pouvoir de disposer de ses biens mobiliers d'une manière illimitée. Cependant il ne pouvait pas et ne pourra pas les donner à charge de substitution, parce qu'une loi positive, à laquelle les Statuts de 1774 et de 1801 n'ont pas touché, le défend. Un testateur est donc obligé, dans les dispositions qu'il fait concernant sa succession mobilière, de subir les exigences de cette loi; il en doit être de même de la loi qui fixe les degrés d'une substitution des biens immeubles. Du reste, les substitutions sont contraires à l'esprit et à l'objet de notre nouvelle législation sur les testaments, il ne faut donc pas les étendre."

J'ai dit que l'ordonnance de 1629 n'a pas toujours été elle-même observée en France. C'est une ordonnance dont les auteurs font pourtant le plus grand cas; ils lui décernent le titre de monument de jurisprudence. Cette ordonnance, connue sous le nom de Code Michaud, ou Code Marillac, avait le défaut d'être trop en avant des idées du siècle, et certains Parlements de France l'ont acceptée avec beaucoup de répugnance; même au bout d'un certain temps, plusieurs d'entr'eux se sont refusés positivement d'en accepter les dispositions. On constate qu'elle a été enregistrée au Parlement de Paris presque immédiatement après sa promulgation. Etant ainsi enregistrée, si ses dispositions n'ont pas été observées par le Parlement de Paris, c'est que celui-ci s'est mis en opposition directe aux volontés du Roi, ainsi qu'aux exigences du droit commun, qui voulaient que les dispositions des ordonnances fussent suivies dès qu'elles étaient enregistrées.

C'est donc par une pure obstination rebelle, si je puis m'exprimer ainsi, que le Parlement de Paris a quelquefois refusé d'accepter les dispositions de cette ordonnance.

J'ai dit quelquefois, car il n'a pas toujours refusé de les reconnaître. Au contraire, il en a appliqué très-souvent quelques-unes, rejetant arbitrairement les autres, suivant son caprice. Par exemple, les dispositions qui réglaient certaines courtes prescriptions, celles se rapportant aux fermages, aux rentes, aux intérêts, ont été suivies à Paris, de même que dans le reste de la France, mais on refusait en même temps d'appliquer d'autres dispositions de la même ordonnance, parce qu'on trouvait qu'elles froissaient l'esprit public, et que le peuple n'était pas mûr pour cette législation avancée.

Mais il me semble certain que cette ordonnance, ayant été enregistrée au Parlement de Paris avant la création du Conseil Supérieur dans la



Province de Québec, laquelle création date de 1663, cette ordonnance a été introduite et a eu force de loi dans le pays dès le moment de son enregistrement au Parlement de Paris. Car remarquons qu'elle n'était pas sujette, comme les ordonnances postérieures à 1663 à être enregistrée au Conseil Supérieur.

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La même question a été décidée dans la cause de Joubert *v.* Walsh, rapportée au douzième volume de la *Revue Légal*, page 350, dans laquelle le Juge Mathieu, confirmé par la Cour de Révision, a décidé absolument, se fondant sur ce précédent de Blanchette *v.* Blanchette, et sur cette expression  
10 d'opinion de Sir Louis Hypolite Lafontaine, que l'ordonnance de 1629 était en force ici avant la conquête et l'a été jusqu'à la promulgation de notre Code Civil.

Nous avons bien l'ordonnance subséquente de 1747 sur les substitutions, ordonnance qui permet la substitution de meubles jusqu'à un certain point, d'une manière fort limitée. Je n'ai pas besoin d'entrer dans le détail des dispositions de cette ordonnance, ni de faire voir quelles sont les substitutions qui y sont permises en fait de choses mobilières. Je suis exempté de faire cet examen par le fait qu'il a été formellement décidé par tous nos tribunaux, et jusqu'au Conseil Privé dans la cause de Symes *v.* Cuvillier, que l'ordonnance  
20 de 1747 sur les substitutions, de même que les autres ordonnances subséquentes à 1663 qui n'ont pas été enregistrées au Conseil Supérieur, n'étaient pas en force dans le pays. Par conséquent, la seule ordonnance qui doit nous guider est celle de 1629, qui défendait sous peine de nullité toute substitution de meubles.

On a objecté, de la part de la demande, que l'acte 31 Victoria, ch. 7, sect. 10, (le premier Statut passé après la Confédération) fixe l'interprétation qu'il faut donner aux articles du Code Civil, et édicte que les articles de ce code, qui ne sont pas indiqués comme étant du droit nouveau par les codificateurs eux-mêmes, sont censés avoir été lois du pays avant la promulgation  
30 du code; que les cours n'ont pas de discrétion à exercer là-dessus, et doivent considérer que les dispositions qui ne sont pas énoncées par les codificateurs comme étant de droit nouveau étaient de droit ancien.

Mais je ne vois pas que ce Statut puisse recevoir une interprétation aussi étrange. Voici les termes exacts de cette Section 10: "Le Code Civil du Bas-Canada et le Code de Procédure Civile du Bas-Canada, tels qu'imprimés avant l'Union par l'Imprimeur de la Reine de la ci-devant Province du Canada, ont été et sont en force de loi dans cette Province."

Cette disposition ne peut signifier qu'une chose, c'est que les deux codes ont été en force depuis la date des proclamations requises pour leur promulgation.  
40 Avant le 1er Août 1866, il s'était glissé des doutes à cet égard, et pour les faire disparaître, la Législature de la Province de Québec a cru devoir, dès sa première session, édicter formellement que le texte de ces codes, tels qu'imprimés par l'imprimeur de la Reine avant la Confédération, était le véritable texte officiel, et qu'ils avaient force de loi depuis les proclamations, publiées en cette Province à leur sujet.

Ce Statut 31 Vict., ch. 7, ne peut avoir d'autre interprétation raison-

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D'ailleurs l'article 2613 de notre Code Civil tranche la question en ces termes :—

“ 2613. Les lois en force, lors de la mise en force de ce Code, sont  
“ abrogées dans les cas :—où il contient une disposition qui a expressément  
“ ou implicitement cet effet ;—où elles sont contraires ou incompatibles avec  
“ quelques dispositions qu'il contient :—où il contient une disposition expresse  
“ sur le sujet particulier de telles lois. Sauf toujours qu'en ce qui concerne  
“ les transactions, matières et choses antérieures à la mise en force de ce 10  
“ Code, et aux quelles on ne pourrait en appliquer les dispositions sans  
“ leur donner un effet rétroactif, les dispositions de la loi qui, sans se Code,  
“ s'appliqueraient à ces transactions, matières et choses, restent en force et  
“ s'y appliquent, et ce Code ne s'y applique qu'en autant qu'il coïncide avec  
“ ces dispositions.”

Si le tribunal trouve que les dispositions actuelles du Code ne correspondent pas aux dispositions antérieures du droit, il n'a qu'une chose à faire, c'est de ne pas appliquer le Code ; c'est ce qui se fait tous les jours.

Le tribunal n'est pas lié par l'expression d'opinion des codificateurs quant à l'existence de telle ou telle loi reconnue avant le Code. Je conçois qu'il faut avoir un grand respect pour leur opinion, et lorsqu'ils indiquent, entre guillemets, certaines dispositions comme étant de droit nouveau, on doit penser *a priori* qu'elles sont en effet de droit nouveau ; mais ces guillemets sont choses arbitraires, et peuvent avoir été erronément insérés dans le cours de la rédaction. Quand la loi s'exprime aussi clairement qu'elle le fait par l'Article 2613 du Code, quand la promulgation du Code Civil par le Gouverneur Général nous mentionne expressément que force de loi n'a été donnée aux articles du Code qu'à compter du premier Août 1866 ; évidemment la loi antérieure au Code reste toujours sujette aux recherches et à l'appréciation du tribunal. 20

Il me paraît donc démontré que ni l'ordonnance de 1747 ni l'article 931 de notre Code, qui permet la substitution des meubles, ne sont applicables dans l'espèce de la substitution dont il s'agit dans la présente cause, le testateur ayant fait son testament le vingt Avril 1860, et étant décédé le douze Juillet de la même année, plusieurs années avant la promulgation du Code. 30

Mais je crois devoir répondre à une prétention énoncée par la demande, et qui semble, à première vue, être soutenue par deux arrêts de nos Cours, l'un desquels a été confirmé par le Conseil Privé. Cette prétention est appuyée sur l'article 838 du Code Civil, qui pourvoit à la capacité de recevoir par testament et au temps où cette capacité doit être considérée. Dans le cas 40 présent, le testateur a ordonné, par son testament, que la substitution ne s'ouvrirait qu'après la mort des grevés et qu'après l'usufruit complété ; l'administration des exécuteurs devait durer dix ans, et devait être suivie de l'usufruit de la veuve, si elle survivait ; cet usufruit de la veuve devait être suivi de la jouissance des cinq enfants du testateur, et, après leur décès, ces propriétés devaient retourner aux appelés à titre de nus-proprétaires. Cette

substitution n'est pas encore ouverte, car il n'y a qu'une partie des enfants qui soient en âge, il n'y en a même qu'un qui paraisse en âge d'après la déclaration, les autres étant encore mineurs.—Or, la substitution n'étant pas encore ouverte, l'article 838 a, dit-on, toute ra force par rapport à la capacité de recevoir pour les appelés. Les savants avocats de la demande citent, à ce sujet, les deux précédents dont j'ai parlé, dont l'un se trouve au deuxième volume de la *Revue de Législation*, page 1 (Hamilton v. Plenderleath), et l'autre au quatorzième volume du *Jurist*, page 197, quant au jugement rendu en première instance, et au vingtième *Jurist*, page 49, quant au jugement du Conseil Privé qui confirmait le jugement des premières Cours (King v. Tunstall).

10 J'avoue qu'à première vue ces deux précédents paraîtraient justifier quelque peu la prétention émise par la demande relativement à cette question. Dans la cause de King v. Tunstall, le testateur avait fait son testament dans l'intervalle de temps qui s'est écoulé entre la mise en vigueur du Statut de 1774 et la mise en vigueur du Statut de 1801. Le Statut de 1774 était relatif à la faculté illimitée de tester par rapport au testateur lui-même, et l'Acte de 1801 réglait la capacité de recevoir des légataires, et complétait ainsi la législation antérieure de 1774.

Le testateur était donc décédé en 1799, deux ans, je crois, avant la  
20 passation du Statut de 1801; il avait fait un legs défendu par le droit antérieur, c'est-à-dire un legs à des bâtards adultérins. Dans l'action dont il s'agissait, ce legs était mis en question et attaqué comme nul et prohibé. On répondait : " Il n'est pas nul, parce que le testateur a fait ce legs lorsqu'il  
" avait le droit de le faire en vertu du Statut de 1774, qui enlevait complète-  
" ment toute incapacité au testateur quant à la faculté de disposer de ses  
" biens, et qui lui permettait d'en disposer d'une manière absolue : il est vrai  
" que ce legs est antérieur au Statut de 1801 qui règle la capacité de recevoir  
" par rapport aux légataires, mais il faut appliquer la doctrine que dans les  
" legs dont l'effet demeure suspendu après le décès du testateur, soit par  
30 " suite d'une condition, soit dans les cas de legs à des enfants à naître et de  
" substitution, la capacité de recevoir par testament se considère au temps  
" où le droit est ouvert." Cette doctrine, on le sait, est reproduite par  
l'Article 838 de notre Code et est tirée du droit antérieur. Les tribunaux ont  
donné gain de cause aux légataires.

Il n'y a pas de doute quant au principe lui-même; il s'agit de son application. On a jugé dans cette cause de King v. Tunstall, de même que dans l'autre arrêt dont j'ai parlé, que la capacité de recevoir des légataires (bâtards adultérins) devait se considérer au moment où la substitution devenait ouverte. La substitution dans ce cas s'était ouverte en 1835, et on a décidé  
40 que c'était à la loi de 1835 qu'il fallait s'en rapporter pour considérer la capacité de légataires, car en réalité cette capacité des légataires était seule en question.

Dans l'espèce actuelle, ce n'est pas la capacité personnelle des légataires qu'il faut considérer, car il s'agit de déterminer si le legs lui-même était permis au testateur au temps où il l'a fait.

L'Article 838 règle les legs dont l'effet reste suspendu. Si le legs est permis par la loi, il n'y a plus de question, il ne s'agira que de constater si, au

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temps où il s'ouvrira, la capacité des légataires pour le recevoir sera reconnue par la loi de l'époque; si, au contraire, au temps où ce legs est fait par le testateur, il est positivement défendu par la loi, et si la prohibition de la loi s'applique à toute une classe de biens, comme, par exemple, des biens meubles, dont la substitution est défendue par l'Ordonnance de 1629, ce n'est plus la capacité du légataire pour recevoir, c'est le droit lui-même du testateur pour tester qu'il faut considérer, et les remarques du Juge en Chef Lafontaine s'appliqueront ici dans toute leur force.

Je dis donc qu'à l'égard du droit du testateur, c'est à l'époque de son testament qu'il faut considérer sa capacité de tester; que, dans l'espèce, la prohibition de substituer des biens meubles existait lors du testament et empêchait absolument le testateur de créer aucune substitution à l'égard d'aucune partie de ses biens meubles. C'est donc l'Article 835 et non l'Article 838 du Code Civil qu'il faut appliquer.

Comme ces précédents d'ont j'ai parlé peuvent avoir une certaine valeur, je me suis appliqué, dans le jugement officiel de la Cour, à leur donner la véritable signification qu'ils ont, suivant moi, et à démontrer qu'ils n'affectent en rien la cause actuelle.

Maintenant, je n'ai pas besoin d'ajouter qu'en vertu de l'Article 387 du Code Civil, les parts ou actions de Banque en question en cette cause, et prétendues substituées par le testateur, étaient et sont meubles par la détermination de la loi, et que, d'après la charte de la Banque Molson, et d'après la loi générale des banques, ces parts de banque sont aussi des meubles. Il n'y a pas de doute quant à cela.

Il résulte de ce que je viens de dire :

1<sup>o</sup>.—Que par le droit antérieur à celui qui nous régit maintenant, la substitution créée par le testateur n'a pu frapper les parts de Banque dont il est question ;

2<sup>o</sup>.—Que la substitution, prétendue représentée par le Demandeur es-qualité en cette cause, n'a aucun droit présent ou éventuel à revendiquer ou à protéger au moyen de la présente action sur les parts de Banque mentionnées dans la demande. Et considérant la cause à ce point de vue, il deviendrait inutile pour la Cour d'entrer dans l'examen des autres questions soulevées dans le cours du litige.

Je pourrais m'arrêter ici. Cependant, dans une cause de cette importance, il me semble que les parties ont droit à une expression d'opinion de la part de la Cour sur les autres principales questions soulevées dans la contestation.

La deuxième question, importante et décisive, qui s'élève dans la cause, est de déterminer si l'Article 16 du testament dont j'ai fait la lecture, permettait aux exécuteurs de faire, entre les divers grevés, le partage des biens qu'ils ont opéré par les divers actes du 27 Mars, du 11 Mai, du 25 Mai et du 15 Juin 1871; si, pour les fins de ce partage, il leur était loisible d'aliéner partie de ces biens et d'en attribuer le produit aux grevés ou à quelques-uns d'entre eux, au lieu de les partager en nature; si les parts de Banque pouvaient être ainsi aliénées et leur produit valablement attribué aux copartageants; et enfin, si le partage, tel qu'opéré, fait loi entre les grevés, fixe et détermine

d'une manière finale l'actif de la substitution dans chaque ligne, et lie la substitution.

Cet Article 16 du testament permet aux exécuteurs, en vue du partage, d'aliéner "any part of the said residue, and in lieu thereof, to apportion and divide the net proceeds of the sales thereof; it shall be competent for them to do so, *anything hereinbefore to the contrary notwithstanding.*"

Cette clause me paraît aussi simple, aussi générale et aussi permmissible que les exécuteurs pouvaient la désirer pour justifier ce qui a été fait.

10 Les premières clauses du testament paraissent limiter le pouvoir des exécuteurs à la vente des immeubles, et manifester le désir du testateur que les parts de Banque ne soient pas aliénées pendant les dix années du fidéi-commis. Mais le testateur dit ensuite aux exécuteurs, dans un langage parfaitement clair, et non ambigu, dans diverses clauses du testament :

"Après l'expiration des dix ans, vous ferez la division, vous opérerez le partage vous-mêmes, et aux fins de ce partage, je vous donne une discrétion absolue. Vous aurez le droit de vendre ce qui restera des biens, et au lieu d'attribuer à la part de chacun des grevés tels ou tels biens en particulier, vous aurez le droit de disposer de ces biens comme vous l'entendrez, et de diviser et distribuer le produit à la place des biens eux-mêmes, *nonobstant* 20 "*les clauses antérieures de mon testament.*" Était-ce imprudent de la part du testateur ?

Était-ce, par cette dernière disposition, anéantir l'effet des premières clauses, et mettre la substitution en danger ?

Où peut-être, mais le testateur l'a voulu expressément, et il a exprimé cette volonté d'une manière assez claire pour qu'on ne puisse s'y tromper.

Par un article bien connu de notre Code (l'Art. 952), le substituant peut indéfiniment permettre l'aliénation des biens substitués, et la substitution n'a d'effet, en ce cas, que si l'aliénation n'a pas eu lieu. Evidemment, si au lieu de permettre cette aliénation au grevé, le testateur la permet aux exécuteurs 30 testamentaires, nous arrivons à la même conséquence, à savoir, que la substitution ne peut plus affecter les choses aliénées.

Les parts de la Banque Défenderesse, appartenant au testateur, étaient au nombre de trois mille deux cent (3,200). La succession devant être divisée entre cinq familles (celles de John, d'Alexander, de Samuel Elsdale, de George Elsdale et de Joseph Dinham Molson), la répartition égale de ces parts entre les cinq branches aurait donné 640 parts à chacune. Mais les exécuteurs avaient le pouvoir incontestable de diviser ces parts autrement. Ils pouvaient soit les aliéner toutes, soit en aliéner une partie seulement, et, en ce cas, distribuer le produit lors du partage. Ils pouvaient encore, s'ils n'en aliénaient 40 aucune portion, les diviser inégalement entre les diverses branches, et même n'en attribuer aucune partie à une ou plusieurs branches. Ils pouvaient même les faire tomber toutes au lot d'une des familles seulement, s'ils le jugeaient à propos, sauf toujours à indemniser les autres en leur attribuant d'autres biens, ou de l'argent comptant, lors du partage.

Le partage a été fait au moyen des divers actes que j'ai déjà mentionnés, en Mars, Mai et Juin 1871. Dans les lots respectivement attribués à John et à Alexander Molson, *aucune portion des parts de banque en question ne leur est*

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*attribuée*, mais ils ont, à la place, des biens immeubles, des dettes actives hypothécaires, et un certain montant en argent (cash). La proportion entre les divers lots attribués à tous les héritiers paraît équitable et juste, et faite de manière à accorder à chaque branche un cinquième de la succession.

Ces lots ont été acceptés par tous les grevés, représentant les diverses branches, et tous en ont été mis en possession. Comme tous les autres, Alexander Molson, le grevé qui se joint aujourd'hui au curateur pour porter la présente action, a accepté les biens échus à son lot, et les possède.

Ceci n'est-il pas, aux termes du testament, un partage définitif qui fixe irrévocablement la substitution, et qui la limite, dans chaque famille, aux biens échus à son lot? Ce partage n'est pas attaqué au moyen de la présente action, et je crois qu'il n'aurait pu l'être avec succès, vû les termes du testament. 10

Comment, avant d'avoir fait annuler ce partage, le curateur à la succession et le grevé Alexander Molson, qui se joint à lui, peuvent-ils aujourd'hui prétendre que les 640 parts de banque qu'ils revendiquent ont à quelque époque, été la propriété de la substitution créée en faveur des enfants du dit Alexander Molson, lorsque, par le partage définitif, ces 640 parts, non seulement ne sont pas tombées au lot du dit Alexander Molson, mais en ont été formellement exclues? 20

Mais on demande: Que sont devenues les 3,200 parts de banque en question? Les exécuteurs les ont-ils toutes aliénées aux fins du partage, et en ce cas, comment ont-ils partagé le produit? Ou n'en ont-ils vendu qu'une partie et quelle partie? Et comment ont-ils procédé au partage de celles restant en nature et à la répartition du produit de celles qu'ils ont converties en argent?

On peut répondre que ceci importe peu en face du fait principal que les exécuteurs ont exercé leur discrétion au désir du testateur, qu'ils n'ont pas à rendre compte, sur la présente action, de la manière dont ils l'ont exercée, et que du moment que le partage a été fait par eux, et que les divers lots ont été acceptés par les héritiers, il n'y a pas lieu de s'enquérir de ce que peuvent être devenus les divers biens qu'ils avaient pouvoir de vendre et dont ils ont partagé le produit. 30

Constatons cependant ce qui s'est passé. Le 5 Avril 1871, les exécuteurs transfèrent, dans les livres de la banque, 640 parts à John Molson *personnellement*, 640 parts à Alexander Molson, aussi *personnellement*, 640 parts à la succession George Elsdale Molson, *in trust*, 640 parts à Joseph Dinham Molson, *in trust*; et le 11 Mai 1871, 640 parts à Samuel Elsdale Molson, *in trust*.

Le 27 Mars 1871, les lots de George Elsdale et de Joseph Dinham Molson dans la succession leur sont respectivement attribués, et dans chacun de ces lots sont comprises les 640 parts de banque transférées le 5 Avril; le 11 Mai 1871, le lot de Samuel Elsdale lui est attribué, et dans ce lot figurent les 640 parts transférées le même jour; le 25 Mai 1871, on fixe et détermine le lot de John, et le 15 Juin de la même année, celui de Alexander, et dans ces lots, on ne leur attribue aucune part de la Banque Molson, remplaçant cet actif par de l'argent comptant (*cash*) ou d'autres valeurs. 40

Ainsi, dans le cas de John, comme dans le cas d'Alexander, les

exécuteurs ont jugé à propos d'affecter à la substitution, non pas les parts mêmes, mais leur produit, ou leur équivalent; qui peut s'en plaindre, lorsque le testateur l'a voulu ainsi ?

Mais on dit : Les exécuteurs, en faisant enregistrer dans les livres de la Banque Molson, avant le partage, 640 parts au nom de John Molson *personnellement*, et 640 parts au nom d'Alexander Molson *personnellement*, leur ont de fait vendu ces parts, et c'est le produit de ces ventes qu'on a ensuite placé dans leur lots respectifs. Or, Alexander Molson étant lui-même exécuteur, conjointement avec William Molson, il se trouve qu'un des exécuteurs a  
10 vendu à l'autre, son conjoint, 640 parts, et cette vente est illégale.

Dans mon opinion, cette objection ne peut pas s'élever ici. Supposons qu'au lieu de faire, dans les livres de la Banque, le transfert du 5 Avril 1871, à Alexander Molson, on l'eût fait à un tiers: pourrait-on s'en plaindre ? Certainement non, car c'était dans la limite des pouvoirs des exécuteurs. Quelle différence cela fait-il pour la substitution que le transfert ait été fait au grevé plutôt qu'à un tiers ? Aucune. Dans les deux cas, le résultat est le même : c'est toujours le produit des parts qui est tombé dans la substitution.

Mais il y a à cette objection une réponse encore plus péremptoire. C'est que le grevé est incontestablement le propriétaire des biens substitués.  
20 Une simple remise des biens substitués faite au grevé *lui-même*, par les exécuteurs, aurait été légale. Au lieu de cette simple remise, on lui fait un transport de parts *qui ne doivent pas entrer dans son lot par le partage*. Il donne pleine valeur pour ces parts, et plus tard, par le partage, on lui attribue, pour remplacer ces parts, d'autres propriétés ou d'autres valeurs. Est-ce bien à lui à se plaindre ? Est-ce même au curateur, qui ne peut, même dans le cas d'actions conservatoires, qu'agir pour la conservation des biens échus au lot des appelés ?

Car il ne faut pas perdre de vue les effets que la loi attribue au partage par l'article 746 du Code Civil : "Chaque co-partageant est censé avoir  
30 "succédé seul et immédiatement à toutes les choses comprises dans son lot "et n'avoir jamais eu la propriété des autres biens de la succession."

Donc les appelés, représentés par le curateur, ne peuvent se plaindre d'une aliénation antérieure au partage, car c'est précisément ce partage qui a fixé la part de la substitution dans chaque ligne. Dans la présente action, on ne se plaint pas que la part des appelés Alexander Molson ait été aliénée indument. On se plaint de l'aliénation indue de certains objets qui—, par le partage, ne forment pas partie du lot des appelés ! Evidemment c'est une erreur et une confusion bien étranges !

On a aussi soulevé la question d'insaisissabilité et de défense d'aliéner, pour  
40 cause alimentaire. Mais les clauses qui ont rapport à cela, dans le testament, ne concernent que les grevés. Ainsi, il y a défense pour ceux-ci d'aliéner, mais seulement quant à la part qui reviendrait à chacun d'eux par le partage. Et il n'en pouvait être autrement.

La position de la Banque Défenderesse en cette cause est celle d'un tiers de bonne foi, qui, confiant dans les termes d'un testament donnant toute discrétion aux exécuteurs, et dans l'effet d'un partage accepté par tous les intéressés, a permis aux exécuteurs et aux grevés de faire certains transferts

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—continued.

de parts de banque rendus nécessaires pour les fins du partage. Et quant à la connaissance que les officiers de la banque ont pu avoir de toutes ces transactions, je dois dire que s'ils étaient au fait de tout ce qui s'est passé, c'est précisément cela qui justifiait la banque d'agir comme elle l'a fait.

Mais la Banque est en outre efficacement protégée par les dispositions de sa propre charte, (18 Victoria, chap. 202, Art 35,) et par les clauses de l'acte général des Banques, contre tout recours à raison d'une substitution ou d'un fidéi-commis : les droits apparents étant les seuls que la Banque soit tenue de respecter dans ses transactions avec les tiers. Dans l'espèce, les droits apparents des grevés et des appelés, ainsi que ceux des exécuteurs, étaient 10  
tels que la Banque ne pouvait croire qu'il y eut le moindre danger, pas plus que la moindre illégalité, à permettre les transactions dont il s'agit. Et à ce point de vue seul, abstraction faite de tout autre point, l'action des Demandeurs ne pouvait être maintenue.

Les Demandeurs ont prétendu que les deux exécuteurs William et Alexander Molson avaient conspiré pour écarter complètement le troisième exécuteur, Joseph Dinham Molson, et pour agir seuls. La preuve ne justifie pas cette imputation. Joseph Dinham Molson n'a jamais agi comme exécuteur, et n'a jamais voulu remplir les devoirs de cette charge. Dès que sa nomination lui a été connue, il a été consulter son oncle William, en qui il avait toute 20  
confiance, et celui-ci lui ayant conseillé de ne pas agir, il s'est soumis à cette recommandation, et n'a jamais participé à aucun acte d'administration. Or le testament dit expressément que deux exécuteurs pourront agir, sans l'intervention du troisième.—D'ailleurs cette question ne pourrait s'élever dans le présent litige, et ne peut affecter la position prise par la banque Défenderesse.

Remarquons aussi que Joseph Dinham Molson a ratifié tout ce qui a été fait, qu'il a pris part au partage, et qu'il a accepté son lot.

Je crois avoir démontré que le grevé et le curateur à la substitution ne peuvent attaquer les actes faits par les exécuteurs en conformité des 30  
dispositions du testament. Mais on peut aller encore plus loin, au point de vue de la doctrine, et dire sans crainte qu'en supposant même que les transports et aliénations des exécuteurs n'auraient pas été justifiés par le testament, le grevé et le curateur ne pouvaient les mettre en question, ces transports et aliénations ayant été approuvés par le grevé lui-même et faits à son profit ; que le grevé ne pouvait pas plus attaquer ces aliénations qu'il ne pouvait se plaindre de celles qu'il aurait faites lui-même ; que le curateur, avant l'ouverture de la substitution, ne peut contester les actes d'aliénation du grevé, et ne peut que faire des actes conservatoires et porter des actions de même 40  
nature.

D'après *Pothier (Des Substitutions, sect. 5)*, la matière des substitutions se réduit à trois grands principes :—

“ 1<sup>o</sup>.—L'héritier, dit-il, ou autre grevé de restitution, est, avant l'ouverture, “ *seul* propriétaire des biens ; 2<sup>o</sup> outre que le grevé est débiteur des biens “ substitués, ce droit de propriété qu'il a des immeubles substitués n'est “ pas une propriété incommutable, mais une propriété *résoluble*, au profit du “ substitué, par l'échéance de la condition qui doit donner ouverture à la



“ substitution ; 3°. le substitué, avant l'ouverture de la substitution, n'a aucun droit formé par rapport au bien substitué. mais une simple espérance.”

Ce sont ces trois grands principes que la doctrine ancienne et moderne a toujours consacrés, et qui font la base des articles de notre Code qui concernent la substitution (art. 944 à 960).

Peu importe que le grevé ne soit propriétaire que sous condition *resolutoire*, car la condition de cette espèce, à la différence de la condition *suspensive*, ne fait pas obstacle à l'acquisition immédiate du droit. Ceci est élémentaire. Et du principe que le grevé est propriétaire, résulte comme  
10 conséquence qu'il *peut* aliéner, soit à titre onéreux, soit à titre gratuit. Si la substitution ne s'ouvre pas, le grevé *aura toujours été* propriétaire incommutable, et aura conféré des droits incommutables à son acquéreur. Si elle s'ouvre, l'appelé peut revendiquer les biens aliénés, ou réclamer leur valeur.— Mais tant qu'elle n'est pas ouverte, l'appelé, qui n'a qu'une *simple espérance*, ne peut faire que les actes conservatoires, notamment interrompre la prescription. Mais jamais il ne pourra, avant l'ouverture, attaquer ou contester les aliénations consenties par le grevé.

(*Merlin*, Rep. Vo. Substitution, sect. 14, No. 2; *Rolland de Villargues*, Ch. II., sect. 2, paragraphe 5, No. 1; 5 *Toullier*, No. 736; 9 *Duranton*, No. 585; 20 *Coin-Delisle*, sur art. 1051; 3 *Grenier*, No. 365; 4 *Troplong*, *Donations* No. 2237, et 4 *Idem*, “ Vente,” No. 212; 4 *Colmet de Santerre*, No. 213; 7 *Aubry et Rau*, parag. 696, p. 308; 5 *Demolombe*, Nos. 550, 551; 14 *Laurent*, Nos. 562, 563; 11 *Beaudru-Lacantinerie*, No. 677; *Pandectes Françaises*, “ Donations et testaments,” Nos. 10,782 et suivants).

L'action des Demandeurs n'est pas et ne pouvait être une action conservatoire. Une action conservatoire serait impossible dans l'espèce, car on allègue que les parts léguées par le testateur sont perdues pour la substitution. Mais on dit à la banque, par l'action que l'on porte contre elle :  
30 “ Par votre faute et votre connivence avec les exécuteurs et le grevé, vous avez laissé perdre ces parts de banque qui ne peuvent être retrouvées ni retracées. Nous vous demandons de les remplacer, et de nous donner, non pas ces parts identiques (ce qui est impossible) mais des parts nouvelles, pour nous indemniser.” C'est bien une action en dommages, mais ce n'est pas une action *conservatoire*.

L'article 956 de notre Code, reproduisant les dispositions de l'art. 1,180 et des art. 1,055 et suivants du Code Napoléon, ne permet à l'appelé, avant l'ouverture, que les actes et actions conservatoires. Ces actes et actions sont énumérés par les auteurs, et notamment par les *Pandectes Françaises*, Vo. “ Actes conservatoires.” Ils sont les suivants : Les réquisitions et renouvellements d'inscriptions hypothécaires, les oppositions et levées de scellés, les  
40 inventaires, les protêts, les appositions à partage, les demandes afin de séparation des patrimoines, les actions pour interruption de prescription, les saisies-arrêts (en certains cas). En un mot, tout ce qui tend à la conservation de la chose même affectée au droit des appelés. Mais jamais on ne se serait avisé de qualifier de *conservatoire* une action semblable à celle qui nous occupe.

Ici, nous avons le spectacle étrange du grevé lui-même qui se joint au

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curateur de la substitution et à l'un des appelés (aujourd'hui majeur), pour porter une action d'un caractère certainement nouveau, dans laquelle il attaque et conteste à la fois des alienations que les exécuteurs testamentaires auraient faites à son propre profit, et des aliénations subséquentes qu'il aurait faites lui-même des objets substitués.

A quelque point de vue que j'apprécie une telle demande, je ne puis que la croire mal fondée, et la rejeter en conséquence avec dépens.

## Document VI.

No. 59.  
Summary of  
Proceedings  
in the Court  
of Queen's  
Bench from  
18th Oct.  
1892 to 19th  
Sept. 1893.

Transcript of the Proceedings had and entries made in the Register of the Court of Queen's Bench (Appeal Side).

10

18th October 1892.

Messrs. Robertson Fleet and Falconer file an Inscription in Appeal.

8th November 1892.

The Record is received from the Superior Court of the District of Montreal.

14th November 1892.

Messrs. Abbotts Campbell and Meredith appear for the Respondent.

24th March 1893.

The Respondents file their printed Case.

25th March 1893.

20

Messrs. Robertson Fleet and Falconer appear for the Appellants.

The Appellants file their printed Factum.

22nd May 1893.

Present: The Honourable Sir Alexander Lacoste, Knight, Chief Justice.

„ Mr. Justice Baby.

„ „ Bossé.

„ „ Blanchet.

„ „ Hall.

The Court upon the application of said Appellants inasmuch as the stock and moneys claimed by Appellants' action and at issue on the present appeal were bequeathed to said Appellants for aliment and as pending a final judgment Appellants are deprived of all revenue therefrom, doth adjudge and declare the said case entitled to be heard by privilege and doth order that the same be placed upon the roll of privileged cases to be argued upon a day fixed by the Court, costs reserved.

30

13th September 1893.

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The Honourable Sir Alexander Lacoste, Knight, Chief Justice, files a declaration as follows to wit :

I the undersigned Chief Justice of the Court of Queen's Bench, do hereby declare myself incompetent to sit in this cause having been consulted before my elevation to the bench upon the issues in the case by one of the parties herein.

Montreal, 13th September 1893.

(Signed) A. LACOSTE, C.J., C.Q.B.

No. 59.  
Summary of  
Proceedings  
of the Court  
of Queen's  
Bench from  
18th Oct.  
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*continued.*

10 There is filed a petition on behalf of the Appellants praying for the adoption of the necessary steps, for the appointment of a Judge *ad hoc*, to replace Sir Alexandre Lacoste and an order conformable thereto signed by Mr. Justice Wurtele.

A letter from the Chief Justice of the Superior Court appointing Mr. Justice de Lorimier as Judge *ad hoc* in this case received this day is here entered to wit :

Clerk of Appeals.

Sir,

Montreal, 13 Sept. 1893.

20 I have to acknowledge the receipt of your letter dated the 13th notifying me that one of the Judges of the Superior Court for Lower Canada is required to sit and act in the cause pending in the Court of Queen's Bench (Appeal side) wherein

George W. Simpson - - - - - Appellant,

and

The Molsons Bank - - - - - Respondents

in lieu and stead of the Honourable Sir Alexandre Lacoste who is incompetent to sit in the said cause ; and having communicated with the Judges of the said Superior Court, it has been arranged that the Honourable Judge de Lorimier will sit and act at the hearing of the cause above mentioned.

30

I have the honour to be,

Sir,

Your obedient servant,

(Signed) F. G. JOHNSON, C.J., S.C.

15th September 1893.

Present: The Honourable Sir Alexandre Lacoste, Knight, Chief Justice.

„ Mr. Justice Baby.

„ „ Bossé.

„ „ Blanchet.

„ „ Hall.

40 The Honourable Sir Alexandre Lacoste, Knight, Chief Justice, does not sit. The hearing on the merits is fixed for Monday the eighteenth instant.

RECORD.

No. 59  
Summary of  
Proceedings  
of the Court  
of Queen's  
Bench from  
18th Oct.  
1892 to 19th  
Sept. 1893—  
*continued.*

18th September 1893.

Present : The Honourable Mr. Justice Baby.  
                  "                  "                  Bossé.  
                  "                  "                  Blanchet.  
                  "                  "                  Hall.  
                  "                  "                  de Lorimier *ad hoc.*

The argument on the merits is opened ; and the Court is adjourned.

19th September 1893.

Present : The Honourable Mr. Justice Baby.  
                  "                  "                  Bossé. 10  
                  "                  "                  Blanchet.  
                  "                  "                  Hall.  
                  "                  "                  de Lorimier *ad hoc.*

The hearing on the merits is closed.

*Curia advisare vult.*

No. 60.  
Judgment of  
the Court of  
Queen's  
Bench,  
rendered  
27th Feb.  
1894.

Document VII.

27th February 1894.

Present : The Honourable Mr. Justice Baby.  
                  "                  "                  Bossé. 20  
                  "                  "                  Blanchet.  
                  "                  "                  Hall.  
                  "                  "                  de Lorimier *ad hoc.*

No. 628.

Dans une certaine cause entre :

Andrew B. Stewart, de la cité et du district de Montreal,  
Comptable, en sa qualité de Curateur dûment nommé  
de la substitution crée par le testament de feu  
l'Honorable John Molson, en son vivant du dit lieu de  
Montreal, pour la part des biens du dit Honorable  
John Molson, dont Alexander Molson, un des fils du  
dit Honorable John Molson est grevé ; le dit Alexander  
Molson, du dit lieu de Montreal, gentilhomme, en sa  
qualité de grevé comme susdit ; et Herbert S.S. Molson,  
du dit lieu de Montreal, un des Appelés compris dans  
la dite substitution - Demandeurs en Cour de première instance,

et

George W. Simpson, de la cité et du district de Montreal,  
agent de change, en sa qualité de Curateur de la dite

substitution créée par le testament du dit Honorable  
John Molson dûment autorisé à interjeter le present  
appel - - - Demandeur par reprise d'instance, *Appellants*,

et

The Molsons Bank, corps politique et incorporé, ayant  
son principal bureau et siège d'affaires en les cité et  
district de Montréal - - Défenderesse en Cour de première  
instance - - *Intimée*.

RECORD.

No. 60.  
Judgment of  
the Court of  
Queen's  
Bench,  
rendered  
27th Feb.  
1894—con-  
tinued.

10 La Cour après avoir entendu les parties par leurs avocats sur le mérite  
examiné le dossier de la procédure en Cour de Première Instance et sur le tout  
murement délibéré : Considérant en premier lieu que si deux des Demandeurs  
Alexander Molson et Herbert S. S. Molson n'avaient ni qualité ni intérêt  
suffisant pour instituer la présente action le troisième demandeur A. B. Stewart  
(remplacé par George W. Simpson) curateur à la substitution de la part de  
la succession échue au dit Alexander Molson pouvait l'intenter dans l'intérêt  
des Appelés non nés à la dite substitution au moins quant au capital réclamé :

Considérant, en droit, que d'après la loi du Bas Canada (Province de  
Québec) avant comme depuis la promulgation du Code Civil, les biens meubles  
ont toujours pu être l'objet d'une substitution :

20 Considérant, au fond qu'il est clairement établi au dossier que les 640  
actions de la Banque Intimée revendiquées par le dit curateur n'ont jamais  
formé partie des biens échus au lot du dit Alexander Molson par le partage  
de la succession de feu l'Honorable John Molson son père tel qu'il est constaté  
avoir été fait entre les exécuteurs du testament de ce dernier de ces cinq  
légataires alors majeures par les différents actes produits au soutien de l'action  
et entre autre par celui du 15 Juin 1871 reçu devant Maître Phillips notaire  
signé par le dit Alexander Molson lui-même et que le dit partage et les dits  
actes ne sont ni attaqués ni argués de fraude et de nullité :

30 Considérant que par l'effet de l'article 746 du Code Civil le dit Alexander  
Molson est censé avoir succédé seul et immédiatement à toutes les choses  
comprises dans le lot en question et n'avoir jamais eu la propriété des autres  
biens de la dite succession :

Considérant que le dit A. B. Stewart (George W. Simpson) n'a pas  
qualité pour réclamer de l'Intimée des biens qui n'ont jamais appartenu à la  
substitution dont il est le curateur :

Considérant en outre que l'Intimée aux termes de sa charte (18 Vict.  
ch. 202, s. 36) n'est pas tenu de veiller à l'exécution d'aucun fidéi-commis  
soit qu'elle en ait ou non reçu avis nonobstant toute loi ou usage à ce  
contraire :

40 Cette Cour pour ces motifs confirmant le dispositif du Jugement de la Cour  
de Première Instance savoir le Jugement rendu par la Cour Supérieure à  
Montréal le sixième jour d'Octobre 1892 renvoie le dit appel avec dépens.

RECORD.

Document VIII.

15th March 1894.

No. 61.  
Motion for  
leave to  
appeal to  
Her Majesty  
in Council,  
and Order  
of Court  
granting  
the same,  
dated 15th  
March 1894.

Present : The Honorable Mr. Justice Bossé.  
                  "                  "                  Blanchet.  
                  "                  "                  Hall.  
                  "                  "                  Wurtele.

Pursuant to notice given it is moved on behalf of the Appellants that they be allowed to appeal to Her Majesty in Her Privy Council from the Judgment rendered in this cause by this Court on the twenty-seventh day of February last past (1894)

10

The Court doth grant said Motion and said Appellants are hereby allowed to appeal to Her Majesty in Her Privy Council from the Judgment rendered by this Court on the twenty-seventh day of February last past on their giving within six weeks the security required by law and in default of such security being given within such delay the Record shall forthwith be remitted to the Court below without any further order.

28th March 1894.

The Appellants file an authorisation given by the Prothonotary of the Superior Court for the district of Montreal to the said George W. Simpson in his quality of curator to the substitution created by the Will of the late Honourable John Molson and specially for that share thereof referring to Alexander Molson son of the testator to Appeal from the Judgment rendered by this Court on the twenty-seventh of February last (1894) to Her Majesty in Her Privy Council and to institute and prosecute such appeal.

And pursuant to notice given the said Appellants offer as security for their said Appeal to Her Majesty in Her Privy Council Alfred Joyce of the City and District of Montreal, confectioner, who having justified his solvency doth execute a Bail Bond which is taken acknowledged and filed.

District of Montreal.

Be it remembered that on the twenty-ninth day of March one thousand eight hundred and ninety-four came and appeared before me undersigned Deputy Prothonotary of the Superior Court for the province of Quebec in the district of Montreal, George Simpson, of the City of Montreal, in his quality of curator to the substitution created by the Will of the late Honourable John Molson and specially that share thereof referring to Alexander Molson, son of the testator (by Robertson Fleet and Falconer, Esquires, advocates his attorneys) who by virtue of the fiat upon the petition presented to me this day for the purpose of authorising the said petitioner *ès-qualité* to appeal from a Judgment rendered in the Court of Queen's Bench of this Province (Appeal side) on or about the twenty-seventh of February last (1894) to Her Majesty in the Privy Council and to institute and prosecute such appeal hath caused to be cited before me a competent number of the relatives and friends of the substitutes of said substitution viz :—Herbert S. S. Molson, clerk, one of the substitutes of the said substitution Alexander Molson, gentleman, one of the

30

40

institutes, Alexander G. Cross, Advocate, John W. Bates, Advocate, Thomas A. Evans, Merchant, William Oliver Smith, gentleman, Henry B. Picken, Accountant, Alfred Joyce, confectioner, all of the City of Montreal and the seven last-named friends of the said substitutes in default of relations, who having heard the said petition read, and being duly sworn to give their advice on the premises, unanimously say that they are of opinion that the said petitioner be authorised as prayed for by his said petition and the conclusions thereof, and they have signed

10

igned) HERBERT S. S. MOLSON.  
 „ ALEX. MOLSON,  
 „ A. G. CROSS.  
 „ J. W. Bates.  
 „ THOMAS A. EVANS.  
 „ WM. OLIVER SMITH.  
 „ H. B. PICKEN.  
 „ A. JOYCE.

**RECORD.**  
 No. 61.  
 Motion for  
 leave to  
 appeal to  
 Her Majesty  
 in Council,  
 and Order of  
 Court  
 granting  
 the same,  
 dated 15th  
 March 1894  
 —continued

Whereupon the said advice is by me the said Deputy Prothonotary ratified and confirmed, and it is ordered in consequence that the said George Simpson in his said quality of curator to the said substitution be and remain authorised  
 20 to appeal to Her Majesty in the Privy Council from the above-mentioned judgment of the said Court of Queen's Bench and to institute and prosecute such appeal.

(Signed) J. E. CHAMPOUX,  
 Deputy P. S. C.

Certified to be a true copy of the original remaining of record in the office of the Prothonotary of the said Superior Court in and for the said district of Montreal.

30

(Signed) J. E. CHAMPOUX,  
 Deputy Prothonotary of the said  
 Superior Court.

(Endorsed.) The 29th March 1894, Substitution John Molson, Authorisation to Appeal (1st copy). Filed 29th March 1894. (Paraphed) M. D. C. A.

**RECORD.**

No. 62.  
Bail Bond,  
dated 29th  
March 1894.

**Document X.**

Canada, Province of Quebec.

In the Court of Queen's Bench (Appeal Side)

No. 628.

In a certain Cause between

Andrew B. Stewart, of the city and district of Montreal,  
Accountant, in his quality of Curator duly appointed  
to the substitution created by the last will of the late  
Honourable John Molson, in his lifetime of Montreal  
aforesaid, for the share of the said Honourable John  
Molson's estate, of which Alexander Molson, one of  
the sons of the said Honourable John Molson, is  
institute; the said Alexander Molson, of Montreal  
aforesaid, gentleman, in his quality of institute as  
aforesaid; and Herbert S. S. Molson, of Montreal  
aforesaid, one of the substitutes comprised in the said  
substitution - - - Plaintiff in the Court below,  
and

10

George W. Simpson, of the city and district of Montreal,  
stock broker, in his quality of Curator to the said  
substitution created by the last Will of the said  
Honourable John Molson, duly authorised to appeal  
this cause - - - (Plaintiff *par reprise d'instance*) Appellant,  
and

20

The Molsons Bank, a body politic and corporate, having  
its chief office and place of business in the city and  
district of Montreal - (Defendants in the Court below) Respondent.

Be it remembered that on the twenty-ninth day of March, in the year of  
our Lord one thousand eight hundred and ninety-four at the city of Montreal  
before me, the Honourable Mr. Justice Baby, one of the Justices of the Court  
of Queen's Bench for Lower Canada, came and appeared Alfred Joyce of the  
city and district of Montreal, confectioner, who declares himself bound and  
liable unto and in favour of the said the Molsons Bank their heirs, assigns and  
representatives in the sum of two thousand dollars current money of Canada  
for costs to be made and levied of the several goods and chattels, lands and  
tenements of him the said Alfred Joyce to the use of the said the Molsons  
Bank their heirs, assigns and representatives, and more especially to be made  
and levied of the following real property belonging to the said Alfred Joyce to  
wit: of Cadastral lot No. twelve hundred and sixty-three (1263) of the  
St. Antoine Ward of the city and district of Montreal being of the value of  
over two thousand dollars and upwards, over and above all charges hypothecs  
and incumbrances thereon.

30

40

Whereas judgment was rendered in the said cause in the said Court of  
Queen's Bench on the twenty-seventh day of February one thousand eight



hundred and ninety-four on the appeal instituted in this cause and whereas the said George W. Simpson *ès-qualité* has obtained leave to appeal therefrom to Her Majesty in Her Privy Council.

**RECORD.**

No. 62.  
Bail Bond,  
dated 29th  
March 1894  
—continued.

Now the condition is such that if the said George W. Simpson *ès-qualité* do prosecute effectually the said appeal to Her Majesty, satisfy the condemnation and pay unto the said The Molsons Bank their heirs, assigns and representatives, such costs and damages as may be awarded unto them by Her Majesty in the event of the said judgment of the said Court of Queen's Bench being confirmed, then the present obligation shall be null and void,  
10 otherwise the same shall be and remain in full force and effect. And the said Alfred Joyce hath signed.

(Signed) A. JOYCE.

Taken and acknowledged before me, at the city of Montreal the day and year first above written, the said surety having first duly justified as to his solvency. (Signed) G. Baby, J. Q. B.

The said Alfred Joyce being duly sworn doth depose and say he is the lawful owner and proprietor of the real estate described in the foregoing bond and that the same is worth the sum of two thousand dollars, current money of Canada, and upwards over and above all charges, hypothecs and incumbrances  
20 and over and above what would pay his just and lawful debts, and he hath signed.

(Signed) A. JOYCE.

Sworn before me, at Montreal, this twenty-ninth day of March one thousand eight hundred and ninety-four. (Signed) G. Baby, J. Q. B.

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(Endorsed).

No. 628.

In the Court of Queen's Bench for Lower Canada.

G. W. Simpson *ès-qualité*        -        -        -        -        Appellant,  
and  
30 The Molsons Bank        -        -        -        -        Respondents.

Bail Bond.

In appeal to the Privy Council.

Filed 29th March 1894. Paraphed M. and D.

**RÉCORD.**

No. 63.  
Fiat for  
Transcript,  
filed 10th  
April 1894.

**Document XI.**

Canada, Province of Quebec, District of Montreal.  
In the Court of Queen's Bench (Appeal Side).

No. 628.

George W. Simpson, *ès-qual.*, et al. - (Plaintiffs *par*  
*reprise d'instance* in the Court below) Appellants,  
and

The Molsons Bank - (Defendants in the Court below) Respondents.

M.M. Marchand and Duggan,  
Clerk of the said Court of Queen's Bench.

10

Gentlemen,

We hereby require you to prepare a transcript of the Record in this cause in manuscript to be transmitted to the Registrar of the Court of Her Majesty's Privy Council under the judgment in this cause of date the fifteenth day of March last (1894) permitting the said Appellants to appeal to Her Majesty in Privy Council, security in this cause having been duly given.

Montreal, 10th April 1894.

(Signed) ROBERTSON, FLEET, AND FALCONER,  
Attorneys for Appellants.

(Endorsed) Fiat for Transcript, filed 10th April 1894.

20

(Paraphed) M. and D.

**Index of all the Papers comprising the Original Record.**

No. 64.  
M.S.  
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In the Court of Queen's Bench.

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No. 65.  
Certificate of  
Clerk of  
Appeals,  
dated 24th  
April 1894.

We Louis F. W. Marchand and W. E. Duggan joint Clerk of Appeals of Her Majesty's Court of Queen's Bench for Lower Canada, do hereby certify that the foregoing and present five hundred and forty-three pages of the foregoing Transcript Manuscript Record contain true and faithful copies of all and every the original papers, documents and principal proceedings, and of the Transcript of all the Rules, Orders, Proceedings, and Judgments of Her Majesty's Superior Court for Lower Canada, sitting in the City of Montreal, in the Province of Quebec transmitted to the Appeal Office in the said City of Montreal, as the Record of the said Superior Court, in the cause therein lately pending and determined wherein Andrew B. Stewart *et al.* Plaintiffs in the Superior Court and G. W. Simpson *és-qual.* Plaintiff *par reprise d'instance* in the Court below, Appellants in the Court of Queen's Bench and The Molsons Bank Defendants in the Superior Court were Respondents in the Court of Queen's Bench and also of all the proceedings and documents had and filed in the said Court of Queen's Bench (Appeal side) and of all and every the entries made in the Register of the said Court of Queen's Bench and of the judgment therein given on the Appeal instituted before the said Court of Queen's Bench, by the said G. W. Simpson.

In faith and testimony whereof we have to these presents set and subscribed our signature and affixed the seal of the said Court of Queen's Bench (Appeal side).

Given at the City of Montreal in that part of the Dominion of Canada called the Province of Quebec this 24th day of April in the year of our Lord 1894.

(L. s.)

MARCHAND AND DUGGAN,  
Clerk of Appeals.

RECORD.  
—  
No. 65.  
Certificate of  
Clerk of  
Appeals,  
dated 24th  
April 1894  
—continued.

I, the undersigned Sir Alexandre Lacoste, Knight, Chief Justice of the  
10 Court of Queen's Bench for Lower Canada, do hereby certify that the said  
Louis Francois Wilfrid Marchand, Q.C., and William E. Duggan are the joint  
Clerk of the Court of Queen's Bench, on the Appeal side thereof, and that the  
signature "Marchand and Duggan" subscribed at the foot of each of the fore-  
going pages and of the certificate above written is their proper signature and  
handwriting.

No. 66.  
Certificate of  
Chief  
Justice.

I do further certify that the said Marchand and Duggan as such clerk are  
the keeper of the Record of the said Court, and the proper officer to certify the  
proceedings of the same (on the Appeal side) and that the seal above set is  
the seal of the said Court on the Appeal side and was so affixed under the  
20 sanction of the Court.

In testimony whereof I have hereunto set my hand and seal at the City of  
Montreal in the Province of Quebec this\* 21st day of April in the year of our  
Lord 1894.

\* Sic.

(L. s.)

A. LACOSTE,  
Chief Justice, Queen's Bench.  
Province of Quebec.

### JUDGES' REASONS.

Cour du Banc de la Reine (en appel).

Stewart v. La Banque Molson.

No. 67.  
Opinion of  
the Hon.  
Justice  
Blanchet.

30 Trois Demandeurs, Andrew B. Stewart, Curateur à la substitution créée  
par le Testament de feu l'Honorable John Molson, quant à la part qui revient  
dans icelle à un des fils de ce dernier Alexandre Molson; Alexandre Molson  
lui-même grevé de substitution, et légataire résiduaire, d'un cinquième des  
biens ainsi substitués, et Herbert S. Molson, un des appelés à la même  
substitution, se sont réunis pour intenter en Fevrier 1890, contre la Banque  
Molson, une action dans laquelle ils allèguent :

1°. Qu'au nombre des biens substitués par le dit feu l'Honorable  
John Molson, en faveur de ses cinq enfants, se trouvent 3,200 parts ou

RECORD. actions de la dite Banque Molson, dont chacun d'eux devait avoir un cinquième.

No. 67.  
Opinion of  
the Hon.  
Mr. Justice  
Blanchet—  
*continued.*

2°. Que le transfert de 640 de ces actions a été fait illégalement le 5 Mai 1871 par un seul des exécuteurs du Testament au dit Alexandre Molson aussi exécuteur d'icelui et sans aucune mention de la substitution ni de la condition d'inaliénabilité et d'insaisissabilité dont les biens du Testateur étaient frappés.

3°. Que la Banque qui connaissait le Testament la substitution et les conditions sus-mentionnées a enregistré sans objection dans ses livres le transfert en question qu'ils prétendent être atteint de nullité absolue. 10

4°. Qu'en conséquence de cette illégalité Alexandre Molson a pu disposer des dites parts comme s'il en ait été le propriétaire absolu, et que de fait il les a vendues et aliénées et qu'elles sont perdues pour la substitution vu son insolvabilité et ils concluent à ce que la Banque soit condamnée à livrer et à placer dans ses livres au nom du dit Alexandre Molson comme grevé de la dite substitution 640 parts de son capital-actions sous tel délai qui sera fixé par le tribunal, et qu'à défaut de ce faire la dite Banque soit condamnée à leur payer la somme de \$60,000 avec intérêts, et de plus \$70,000, représentant les dividendes accrus sur les dites actions et l'intérêt sur iceux le tout devant être placé au profit de la dite substitution au nom du 20 curateur.

Le première objection soulevée par la Banque à l'encontre de cette action est:—

1°. Que les Demandeurs ne pouvaient se joindre pour l'intenter leurs intérêts n'étant pas les mêmes.

2°. Que le Curateur individuellement n'avait aucun droit à la possession des actions non plus qu'à leur revenu ou à leur équivalent en argent pendant la vie d'Alexandre Molson et ne pouvait obtenir les conclusions prises par lui.

3°. Qu'Alexandre Molson alléguant avoir disposé de ces actions la 30 substitution n'avait pas le droit de les réclamer de son vivant.

4°. Que Herbert Molson, étant un des appelés, n'avait aucun intérêt actuel mais seulement un droit éventuel aux biens substitués avec cinq de ses co-appelés qui n'étaient pas en cause malgré que plusieurs d'entre eux fussent majeurs, et que le seul droit qui lui était reconnu était celui de faire les actes nécessaires pour la conservation des biens tandis que l'action allègue qu'ils n'existent plus et réclame des dommages à ce sujet de la Banque.

En admettant que les prétentions de la Banque quant à Alexandre et Herbert Molson soient bien fondées il reste un troisième Demandeur le curateur à la substitution; et comme ce dernier en vertu de l'Art. 945 C.C. représente 40 les appelés non nés et doit veiller à leurs intérêts dans tous les cas où son intervention est requise ou peut avoir lieu et qu'il est constaté qu'Alexander Molson et son épouse ont des enfants mineurs et qu'il n'est pas impossible qu'ils puissent avoir d'autre héritiers le curateur aux non nés nous semble en conséquence avoir qualité pour agir comme Demandeur dans une action qui évidemment a pour but de protéger leurs intérêts en faisant rapporter à la masse une partie des biens substitués.

Il est vrai que dans la cause de *Dorion v. Dorion* (13 S.C.R. p. 193) la Cour Suprême a jugé en 1886 qu'un curateur à une substitution n'avait pas le droit de recouvrer d'un curateur précédent qu'il avait remplacé les sommes d'argent reçues par le dernier et dûes à la substitution, mais cette cause différait de la présente sur un point fort important : c'est que tous les appelés étaient majeurs et par conséquent capables de se représenter eux-mêmes, tandis qu'il est admis ici que la plupart des enfants d'Alexandre Molson les appelés sont encore mineurs.

RECORD.

No. 67.  
Opinion of  
the Hon.  
Mr. Justice  
Blanchet—  
*continued.*

(Daguesseau, Question sur les Substitution, 37, Question 37<sup>me</sup>).

10 Au mérite la Banque a prétendu en premier lieu et cette prétention a été accueillie favorablement par la Court Supérieure.

1° Que par le droit antérieur au Code Civil la substitution créée par le Testateur n'a pu frapper les parts de Banque dont il est question.

2° Que la substitution prétendue représentée par le curateur n'a en conséquence aucun droit présent ou éventuel à revendiquer les dites parts de Banque.

Mr. le Juge Taschereau qui a rendu ce jugement s'appuie en premier lieu sur le texte de l'Art. 125 de l'ordonnance de 1629 qui est dans les termes suivants : "Voulons aussi que les dits Fidéi-Commis ne puissent avoir lieu  
20 " pour le regard des choses mobilières si ce n'est pour pierres précieuses de " fort grand prix ni semblablement avoir lieu au testament des personnes " rustiques qui vraisemblablement n'entendent ni la nature ni l'effet des " substitutions ni des fidéi-commis," laquelle ordonnance après avoir été enregistrée au Parlement de Paris serait devenue la loi du pays par l'Edit de Création du Conseil Souverain en 1663 et aurait continué d'y être en vigueur jusqu'à la promulgation du Code Civil actuel.

Il cite à l'appui de son opinion non pas un jugement mais un obiter dictum à cet effet de feu Sir Louis Hypolite Lafontaine avant le Code dans la cause de *Blanchet v. Blanchet* (11 L.C.R. p. 220) et un jugement dans le même sens  
30 depuis le Code de Mr. le Juge Mathieu dans celle de *Talbert v. Walsh*, 12 R.L. 334.

Les appelants soutiennent de leur côté que d'après le statut de 1801 reproduit par l'Art. 831 de notre Code la liberté illimitée de tester a toujours existé en ce pays et que par l'Art. 931 reproduit par les codificateurs comme étant de droit ancien conforme en outre à la jurisprudence universelle du Parlement de Paris et à l'opinion de la grande majorité des auteurs il est dit que les biens meubles comme les immeubles peuvent être l'objet de substitution, que plusieurs causes importantes affectant des substitutions qui contenaient à la fois des meubles et des immeubles ont été souvent contestées devant nos  
40 tribunaux et que jamais la question de leur validité quant aux meubles n'y a été soulevée (*Dorion v. Dorion*, M.L.R. Q.B. 1., p., 483. *Robert v. Dorion*, 3 L. C.J. p. 12) l'une d'elles ayant été portée même jusqu'au Conseil Privé que ces substitutions n'ont de fait jamais été attaqués comme illégales et que lorsque la question a été soulevée pour la première fois en 1865 dans la cause de *Mitchel v. Moreau* (13 R.L. 684) où ils agissait d'une substitution de meubles en vertu d'un testament fait en 1821 cette substitution a été déclarée valide par feu

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Ils citent aussi à l'appui de leurs prétentions Domat (Lois Civiles Liv. V. Sect. 2) qui écrivait après l'ordonnance de 1629 et avant celle de 1747 et De Bouchel (Trésor du Droit Français, Vol. 3, p. 554) qui tous deux s'accordent à dire que les substitutions de meubles ont toujours été reconnues dans la Jurisdiction du Parlement de Paris où l'ordonnance de 1629 n'avait pas été suivie, Merlin, Rep. vo. Substitution qui ne réfère qu'au droit romain et à l'ordonnance de 1747 sans jamais mentionner celle de 1629.

Ils soutiennent ces opinions de la haute autorité du célèbre Daguesseau 10 qui dans ses questions sur les substitutions constate et reconnaît avec les avocats les plus éminents de presque tous les Parlements de France que l'ordonnance de 1629 n'avait eu en effet aucune exécution dans le royaume depuis plus d'un siècle excepté dans le ressort des Parlements de Dijon, de Metz et de Besançon.

Ils rapportent enfin six arrêts datés respectivement du 21 Janvier 1672 du 14 Mai 1672 du 18 Janvier 1678 du 31 Mai 1680 du 11 Avril 1686 et du 9 Décembre 1672 dans lesquels des contestations affectant des substitutions comprenant des meubles des immeubles ont été décidées et ces dernières maintenues par le Parlement de Paris dans qu'il y ait été fait aucune mention 20 de la prohibition de l'Art. 125 de l'ordonnance de 1629.

Ils auraient pu ajouter qu'en feuilletant tous les volumes du Journal du Palais et du Journal des Audiences comprenant les arrêts rendus de 1622 à 1723 et les nombreux cas de substitution qui y sont mentionnés le même silence au sujet de cette ordonnance est religieusement observé par les parties leurs procureurs ainsi que par les Juges tant du Tribunal inférieur que par messieurs du Parlement.

A cette liste déjà formidable d'autorités on pourrait ajouter : Duplessis sur la Coutume de Paris p. 903 qui affirme que "l'ordonnance de 1629 ne s'allègue pas au Parlement." Pothier introduction au titre 20 de la Coutume d'Orléans 30 Ch. I., Sect. 1, No. 9 où il dit : "mais cette ordonnance étant comme l'on sait demeurée sans exécution." . . . Pothier Contrat de louage No. 186 où après avoir dit que cette ordonnance avait établi une fin de non recevoir ou prescription de cinq ans pour les loyers des maisons et des fermes atteste de nouveau que cette ordonnance est restée sans exécution dans le ressort du Parlement de Paris où dit-il elle n'a pas été enregistrée et après avoir rappelé l'opinion différente de deux avocats au Châtelet de Paris, Bourjon qui prétendait que cette prescription n'y était pas observée en donnant un démenti à Bretonnier qui avait attesté qu'elle l'était, et Denizart qui prétend qu'elle y était suivie. Pothier ajoute qu'il a consulté à ce sujet un magistrat des plus éclairés du 40 Châtelet de Paris qui a eu la bonté d'en conférer avec plusieurs des plus anciens avocats qui fréquentent le dit siège et ils ont tous répondu dit-il "qu'ils n'ont jamais vu se présenter au Châtelet aucune cause dans laquelle cette prescription ait été alléguée, d'où il suit ajoute-t-il que si la question se présentait cette prescription devrait être rejetée n'étant autorisée ni par une loi revêtue de ses formes ni par aucune Jurisprudence."

Bouillet sur la Coutume de Bourgogne, Ch. 53, No. 46 s'est souvent



expliqué dans le même sens “ mais on sait dit-il que cette ordonnance n’a point de force au Parlement de Paris ni en quelques autres où elle n’a point été enregistrée.”

D’Hericourt de la Vente des Immeubles Ch. 10 No. 24 avocat profondément instruit et exerçant au Parlement de Paris disait : “ Mais par rapport au Parlement de Paris où cette ordonnance (de 1629) n’est pas suivie il faut.” . . . . .

Thevenot d’Éssaulde de Savigny Traité sur les substitutions ne mentionne pas même l’ord. de 1629, 495 *et seq.*

10 Plusieurs publicistes et historiens très estimés entretiennent la même opinion entr’autres Montblin, Maximes du Droit Public Français tome 2. Après avoir relaté les circonstances dans lesquelles cette ordonnance fut présentée au Parlement la résistance des conseillers l’ordre du roi au greffier de signer l’arrêt de vérification et les remontrances qui furent ensuite faites au roi, il constate l’ordre de ce dernier “ que l’ordonnance fut examinée article par article et modifiée s’il y estrait et jusqu’à ce ne voulut point obliger “ messieurs de Parlement à l’exécution.”

Pour prouver que cette ordonnance n’a point été exécutée il dit que malgré qu’elle contient un grand article sur les mariages clandestins on a depuis envoyé 20 une ordonnance au Parlement pour le même sujet le roi et ses ministres sachant bien que l’ordonnance enregistrée en sa présence ne s’exécuterait pas. Mémoires de Talon, tome 3, p. 329 Martin Histoire de France, 11 vol. p. 293.

Cette assertion est confirmée par deux autres actes non moins significatifs de la part du Roi : 1° sa déclaration en date du 25 Novembre 1690 concernant le temps de l’enregistrement des substitutions et donations vérifiée en Parlement le 25 Novembre 1690 et 2° une déclaration subséquente ordonnant la publication et l’enregistrement des substitutions donnée à Versailles le 18 Janvier 1872 dans lesquelles l’édit de 1553 et l’Art. 57 de l’ordonnance de Moulins de Février 30 1566, toutes deux relatives aux substitutions sont seules mentionnées sans qu’il y soit dit un mot de l’ordonnance de 1629.

Monsieur le Président Henault (Abrégé Chronologique de l’Histoire de France an 1629) s’exprime ainsi sur le même point : “ le roi malgré les oppositions du Parlement le fit publier (Code Michaud) dans un lit de Justice car il n’est pas dit qu’il y fut vérifié. Aussi cet édit n’a point été observé dans la suite et les avocats ne le citent pas comme une loi.”

Dans l’ouvrage intitulé : “ Des commissions extraordinaires en matière criminelle,” ouvrage d’un célèbre et savant magistrat qui a cru devoir garder l’anonyme on lit à la page 69, “ Le Parlement de Paris n’a jamais reconnu cette 40 “ ordonnance de 1629. Elle fut publiée non vérifiée dans un lit de Justice où “ la délibération libre fut étouffée. Aussi cette ordonnance connue sous le nom “ de Code Michaud ou Marillac nom de son auteur n’est jamais citée par les “ avocats du Parlement de Paris et n’a jamais été observée.”

Dalloz, Vol. I., Essai Général sur l’Histoire du Droit Français, p. 235, après avoir fait l’éloge de cette ordonnance dont la destinée ne fut pas heureuse parcequ’elle était dit-il trop libérale pour le temps admet qu’elle perdit toute autorité après la disgrâce du Maréchal de Marillac frère de son auteur même

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dans le ressort des Parlements qui l'avaient enregistrée excepté celui de Dijon et que les avocats n'osaient la citer à l'audience il ajoute au No. 235: "Les remontrances du Parlement sur l'ordonnance de 1629 ont été perdues pour la plus grande partie. Cette perte ne laisse point d'être regrettable quoique l'ordonnance n'ait eu qu'une existence éphémère."

Isambert, Recueil général des anciennes Lois Françaises vol. 14, p. 342 dit aussi: "Cette Ordonnance de 1629 n'a jamais été enregistrée au Parlement de Paris excepté dans une délibération sur le premier article et jusqu'au treizième" et il ajoute "On ne trouve plus depuis de traces de la délibération du Parlement sur l'Ordonnance de 1629."

10

Le Juge en Chef Sewell dans une savante dissertation sur l'Ancien Droit Français lue devant la Société Historique de Québec le 31 Mai 1824 disait en parlant de cette Ordonnance; "it fell into general disrepute and certainly for a period was not cited in the Parliament of Paris, there were however during that period some jurisdictions which continued to receive it and in which it was quoted and admitted to be law, particularly in the Parliament of Dijon and by some writers it is asserted that it was finally received as such in all, but by others this is denied and the Ordinance is by them said to have become obsolete. Non mitio licet tentas componere lites."

Les auteurs qui prétendent que plusieurs articles de cette Ordonnance ont été reconnus et appliqués comme loi par le Parlement de Paris entr'autres Denisart verbo; Parentis et Merlin verbis; Concubinage paragr. 1 Divorce paragr. 6 Prescription paragr. 16, etc. se fondent sur ce que l'Art. 121 de cette Ordonnance qui disait que les jugements rendus à l'étranger contre des Français n'emportaient pas de droits hypothèques sur leurs biens situés en France a été souvent invoquée dans les plaidoiries sur cette question, et même cité par le Parlement de Paris dans un de ses Jugements mais ils oublient que cet article ne faisait que reproduire le droit public préexistant tel que reconnu par plusieurs arrêts anciens entr'autres celui de Mornac et par un arrêt plus important encore rendu par le Parlement de Paris le 21 Mai 1585 rapporté par Chopin, Coutume d'Angers liv. 3, ch. 3, tit. 3, no. 11 droit qui était d'ailleurs conforme à plusieurs anciennes ordonnances notamment celle de François I., de 1535 et celle de Charles VIII. de 1490.

30

La plupart des Commentateurs modernes du Code Napoleon en discutant l'Art. 2128 de ce code qui a consacré en lui donnant plus d'étendue le principe reconnu par l'Article 121 de l'Ordonnance de 1629 ne mentionnent pas même la question de savoir si cette Ordonnance a jamais eu force de loi ou non; et ceux qui en font mention se bornent pour le plus grand nombre à répéter avec la majorité des auteurs et des historiens qu'elle n'était pas exécutée dans le ressort du Parlement de Paris.

40

Telle était la Jurisprudence et telles étaient les opinions des Jurisconsultes et des Historiens sous l'Ancien Droit Français lorsque l'Acte 20 Vict. ch. 11 en ordonnant la codification des lois du Bas-Canada prescrivit aux Commissaires chargés de rédiger le nouveau code de n'y insérer que les dispositions d'un caractère général et permanent qu'ils tiendront pour être alors réellement en force et de citer les autorités sur lesquelles ils s'appuient pour juger qu'elles le sont ainsi.

Dans leur second rapport pp. 139 et 140 les commissaires en annonçant que leurs travaux préparatoires étaient terminés quant au Code Civil expliquent au long les difficultés de leur travail vu qu'ils étaient obligés d'exposer le système des lois en force dans le Bas-Canada et déterminer celles de ces lois qui ayant été en force avaient cessé de l'être par le fait de la législation de la désuétude et de la jurisprudence et après avoir rappelés qu'ils avaient eu à rechercher les décisions les usages et la pratique de nos diverses Cours et souvent les décisions les usages et la pratique des tribunaux en Angleterre et en France ils avaient constaté que sur une infinité de points il y avait incertitude divergence d'opinion tant à cause du silence de la Législature que du désaccord entre les tribunaux et les auteurs et ils déclarent cependant que malgré toutes ces difficultés ils se flattent d'avoir saisi l'intention de la Législature et de s'y être conformés dans le projet du Code qu'ils soumettaient quelque temps après au Parlement.

On ne peut guère prétendre qu'un sujet aussi important que les questions de substitutions pouvait en outre échapper à l'attention du Comité de Législation auquel fut référé le Code Civil et dont les travaux étaient dirigés par des jurisconsultes éminents comme Sir Geo. Etienne Cartier, Sir A. A. Dorion, MM. T. I. I. Loranger, H. E. Taschereau, Abbotts, Rose, Irvine, Archambault, Geoffrion, surtout quand on constate que les biens meubles sont mentionnés dans les articles 931, 938, 941 et 981 et que le dernier fut ajouté comme droit nouveau à la suggestion des Commissaires après avoir été nécessairement discuté par le Comité (29 Vict. ch. 41, sect. 172).

Enfin par ce dernier acte la Législature déclare que les Commissaires avaient complété le Code Civil "n'y ayant incorporé que les dispositions qu'ils ont considéré être alors en force et que le Rôle imprimé du Code Civil sera réputé en être l'original rapporté par les Commissaires comme contenant les lois existantes sans amendements."

Les recherches et les travaux des Juges éminents chargés de cet important travail de codification leur haute capacité comme jurisconsultes et leur grande expérience des tribunaux ne nous permettent pas de douter qu'ils avaient sur ce point comme sur bien d'autres analysé la jurisprudence du Parlement de Paris et compulsé l'opinion des auteurs qui viennent d'être cités. Leur déclaration que la substitution de biens meubles était reconnue dans notre droit et aussi avait été transmise ici comme étant la loi suivie dans le ressort du Parlement de Paris jusqu'à la création du Conseil souverain confirmée après une sérieuse discussion devant un comité éclairé de la Chambre par le témoignage de la Législature elle-même c'est-à-dire par le plus haut tribunal du pays doit être suffisante pour faire disparaître tout doute au sujet de la question qui nous occupe et pour convaincre tous ceux qui s'occupent de droit et d'histoire que la substitution des meubles a toujours été permise dans notre province.

D'ailleurs s'il restait encore place pour le plus léger doute on pourrait invoquer un dernier argument en faveur de la substitution des actions de Banque dont il est question en cette cause. C'est que au Parlement de Dijon qui avait enregistré sans protêt et qui observait rigoureusement l'Ordonnance de 1629 les substitutions faites en espèce ou en argent comptant étaient

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confirmées "l'argent comptant étant le prix de toutes choses et les immeubles "étant compris sous ce mot comme les meubles," arrêts du 18 Décembre 1655 du 12 Juillet 1667 et du 12 Janvier 1687 (Questions sur les Substitutions, page 23 ; adde l'opinion de cette Cour exprimée par Mr. le Juge Ramsey dans la cause de Jones v. Cuthbert, 2 M. L. R. Q. B., p. 44).

Les actions de Banque dont il est question en cette cause reconnues comme meubles par la charte de la Défenderesse (18 Vict. ch. 202, s. 36), par l'Acte général des Banques alors en force (S. R. ch. 55, sect. 83) et par le Code Civil, art. 387 reproduisant le droit antérieur ont donc pu être valablement substituées même avant le Code. 10

Examinons maintenant quel est le recours que les Appelants veulent exercer contre la Banque et quelle est la preuve qu'ils ont faite à l'appui de leurs allégués.

Ils disent à la Banque, lors de décès de feu l'Honorable John Molson ce dernier possédait 3,200 actions de votre fonds capital valant \$160,000. 00 et il était de votre devoir de n'accepter le transfert de ces actions en faveur de ses héritiers que conformément aux termes et conditions de son testament que la loi générale et votre charte vous obligeaient de consulter. Or par ce testament ces actions étaient substituées en faveur des petits enfants du testateur et de plus déclarées inaliénables et insaisissables. Vous avez accepté un transfert 20 pur et simple pour valeur reçue de 640 de ces actions en faveur d'Alexandre Molson sans aucune mention du testament ni des autres conditions qui y sont mentionnées. Ce transfert est illégal et nul et vous qui connaissiez la substitution vous n'aviez ni le droit ni le pouvoir d'accepter un tel transfert et vous vous êtes ainsi rendue coupable de négligence et de fraude parceque par suite de ce transfert illégal et nul Alexandre Molson a pu avec votre consentement et à une époque où vous saviez qu'elles ne lui appartenaient pas vendre les dites actions comme si elles lui eussent appartenu et comme il est depuis devenu insolvable les dites actions se trouvent perdues pour la substitution qui a ainsi le droit de les recouvrer de vous avec les dividendes 30 accrus sur icelle et l'intérêt.

Comme on le voit le recours contre la Banque est purement et simplement en dommage parcequ'elle aurait méconnu les devoirs et les obligations que la loi lui impose dans la transmission de ces actions et se serait rendue coupable de négligence et de fraude en acceptant le transfert des 640 actions en question par William Molson à Alexandre Molson c'est-à-dire par un des exécuteurs en faveur de l'autre en l'absence et sans le consentement du troisième après l'expiration des dix années qui ont suivi le décès de feu l'Honorable John Molson et sans mention de son testament et des conditions attachées aux legs faits par ce dernier à ses légataires. 40

Pour pouvoir juger de la valeur de ces moyens il faut voir comment M. Molson a disposé de ses biens quels sont les pouvoirs qu'il a confiés à ses fidéi-commissaires ou exécuteurs et examiner de quelle manière ces derniers ont fait la division et le partage des biens de sa succession.

Par son testament en date du 20 Avril 1860 M. Molson qui mourut le 12 Juillet suivant après avoir fait quelques legs particuliers lègue et confie le résidu de ses biens à William Molson son frère à Dame Elizabeth Molson son

épouse et à Alexandre Molson son plus jeune fils en fidéi-commis à la charge de les administrer pendant les dix années qui suivraient son décès avec de plus le droit de vendre tout ou partie des immeubles qui composait ce résidu s'ils le jugeaient avantageux pour sa succession, et d'en placer le produit d'une manière sûre en effets publics ou privés à la charge toutefois de rendre compte de ces biens et de les remettre tels qu'ils seraient les dix ans expirés à ses légataires ci-après nommés aussitôt que possible après l'expiration du temps fixé pour la durée de leur fidéi-commis, et par le clause 13<sup>me</sup> le testateur veut et ordonne qu'à l'expiration du dit fidéi-commis le résidu de ces mêmes biens

10 tels qu'ils existeront alors passent à ses cinq fils par parts égales et devienne leur propriété pendant leur vie durant seulement et qu'à la mort de chacun d'eux soit avant soit après l'expiration des dix années sus-mentionnées la part de ceux-ci appartienne en toute propriété à leurs héritiers dans la proportion d'un part à chacune des filles et de deux parts à chacun des fils sujets toutefois à l'usufruit de leur mère survivante le temps qu'elle restera veuve autorisant de plus chacun de ses cinq fils à fixer les parts de ces héritiers d'une manière différente et même d'exclure des biens un ou plusieurs d'entr'eux mais seulement par testament et non autrement.

Et par une clause subséquente la clause 18<sup>me</sup> le testateur déclare et

20 ordonne que les biens que ses cinq fils et leurs veuves recevront de sa succession seront exempte de toute responsabilité quant à leurs dettes présentes et futures et de plus insaisissable pour quelque cause que ce soit les dits biens devant être tenus et considérés comme legs d'aliments faits en leur faveur et ne pouvant être cédés ni aliénés par eux ou chacun d'eux pour aucun but ou cause quelconque.

Ces différentes dispositions ont évidemment créé une substitution du résidu des biens ainsi léguée meubles et immeubles en faveur des petits enfants du testateur.

La Banque s'appuyant sur l'autorité de *Tourangeau v. Renaud*, V. L. C. J. 238 et sur les remarques du Juge Meredith approuvées par le Conseil Privé 2 L.R., P.C. p. 4 et 12 L.C.J. p. 90, prétend qu'avant le Code une simple prohibition d'aliéner n'équivalent pas à substitution ne pouvait empêcher l'aliénation des biens et que dans le cas actuel la prohibition d'aliéner venant après la déclaration qui contient la substitution a complètement détruit cette dernière et que si cette prohibition équivalait à substitution elle a créé une substitution subsidiaire en faveur des héritiers légaux du testateur seulement.

30

Cette prétention n'est pas fondée. L'Art. 971 qui est aussi de droit ancien dit que la prohibition d'aliéner peut être simplement confirmative d'une

40 substitution et les codificateurs dans leur second Rapport p. 198 ajoutent : "la prohibition d'aliéner peut n'être exprimée que par surrogation et comme "confirmative d'une substitution."

C'est évidemment ce qui a eu lieu dans le cas actuel.

Recherchons maintenant quels sont les pouvoirs qui ont été conférés aux fidéi-commissaires par la 10<sup>me</sup> clause du testament. Ils ont pendant les dix années que doit durer leur office premièrement tous les pouvoirs nécessaires d'administration; deuxièmement ceux de vendre "all such parts of my real

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estate as are not specifically devised," d'en recevoir le prix et de le placer sur hypothèques en parts de banque ou en effets publics, troisièmement d'en rendre compte et d'en remettre la balance à ses légataires "as the same shall then be found," aussitôt que possible après l'expiration de leur mandat.

Par la clause 16 le testateur ordonne de plus à ses exécuteurs de diviser et de distribuer à la même époque la balance de ses biens à ses légataires prenant les précautions nécessaires pour empêcher la capital des actions d'être perdu entre les mains de ceux qui en deviendraient les porteurs et il ajoute : "if  
 "in making the apportionment and division of the said residue the said Trustees  
 "shall deem it necessary or advantageous to sell any part of the said residue  
 "and in lieu thereof to apportion and divide the net proceeds of the sales  
 "thereof it shall be competent for them so to do anything hereinbefore to the  
 "contrary notwithstanding."

10

Il n'est pas nécessaire d'examiner ici quels sont les pouvoirs légaux des exécuteurs car le testament les a définis et ses termes clairs et formels répoussent l'interprétation que veulent lui donner les Appelants.

La dixième clause qu'ils invoquent confère seulement le pouvoir de vendre les immeubles et d'en placer le produit. Ils prétendent qu'elle interdit aux exécuteurs le pouvoir de déplacer les argents déjà placés mais cette clause dit seulement qu'ils placeront "all their moneys arising from or accruing to  
 "my estate and not already invested." Il n'y a donc rien là qui dise que les  
 exécuteurs ne pourront pas toucher aux placements déjà faits.

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Mais en supposant que cette restriction pourrait être inférée de ces termes de la clause 10 la clause 16 qui est subséquente donne aux exécuteurs en termes le pouvoir de vendre nonobstant tout ce qui a pu être dit de contraire précédemment.

Le testateur avait le droit en vertu de l'Art. 952 C.C. de permettre indéfiniment l'aliénation des biens substitués il a confié ce pouvoir à ses exécuteurs qui l'ont exercé au meilleur de leur connaissance il faut le présumer et il nous est impossible de dire qu'en faisant usage de droits qui  
 leur étaient formellement attribués ils agissaient sans autorité et d'une manière  
 illégale.

30

On dit qu'il n'est pas établi et qu'il est même impossible de prétendre qu'il était nécessaire ou même avantageux de vendre les parts de Banque en question.

Nous n'avons pas à nous occuper de cette question car les exécuteurs étant les seuls juges de la nécessité qui pouvait exister ou de l'avantage qui pouvait résulter de la vente d'aucune partie des biens le seul recours qui puisse être exercé à ce sujet contre eux est un recours en dommage parcequ'ils se  
 seraient rendus coupables de dol de négligence ou de fraude vis à vis des  
 grevés ou des appelés.

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Il nous paraît donc établi hors de tout doute.

1°. Que les exécuteurs avaient droit de procéder au partage après l'expiration des dix années fixées pour la durée de leur fidéi-commis pourvu qu'il n'y eût pas de délais inutiles fait qui n'est allégué ni prouvé.

2°. Qu'ils pouvaient pour arriver à un partage juste et complet entre tous les légataires vendre s'ils le croyaient nécessaire ou avantageux "any part of" "said residue and in lieu thereof to apportion and divide the net proceeds of" "the sale thereof."

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Voyons maintenant comment ils ont procédé :—

La succession se composait d'actions de banques et de compagnies incorporées au montant d'environ \$180,000. 00 hypothèques peu considérables et de certains immeubles dont plusieurs situés sur la Rue St. Jacques à Montreal étaient d'une grande valeur avec plus de \$50,370, en argent comptant  
10 formant un total de \$401,316 :

Les exécuteurs avaient donc à faire cinq lots égaux de \$80,263.

Il est facile de concevoir du moins d'après les renseignements que la preuve nous fournit qu'il était impossible de diviser les quatre propriétés de la Rue St. Jacques entre les cinq intéressés.

Aussi on a eu recours le 10 Janvier 1871 à une vente à l'encan dans le but évidemment de fixer la valeur de chacune d'elles.

La première fut vendue pour \$56,900 à Samuel E. Molson qui consentit à accepter \$30,900 à compte de sa part et la balance de \$26,000 fut transportée à John Molson aussi à compte sur sa part.

20 La seconde propriété divisée en trois magasins fut vendue aux trois autres légataires aussi à compte de leurs parts respectives comme suit, le No. 1 à Geo. E. Molson pour \$30,482. 12, le No. 2 à J. D. Molson pour \$29,284. 11, et la dernière (Maison Rogers et Cie.) à Alexandre Molson pour \$30,779. 50.

Le 27 Mars deux légataires Joseph Molson et les enfants de George Molson reçoivent leurs parts de succession et dans les biens qui forment leurs lots respectifs sont inclus chacun un cinquième des 3,200 actions de la Banque Molson sus-mentionnées.

30 Le 5 Avril suivant les exécuteurs leur font pour valeur reçue un transport qui est accepté par la Banque des deux cinquièmes en question et les exécuteurs transportent en même temps à deux autres co-légataires et plus tard le 11 Mai suivant au dernier d'entr'eux aussi pour valeur reçue un cinquième chacun des dites 3,200 actions et ces transports sont ainsi enregistrés dans les livres de la Banque.

Le 11 Mai Samuel E. Molson reçoit sa part de succession et reconnaît avoir reçu son cinquième des actions en question.

40 Le 25 Mai John Molson reçoit aussi les biens qui forment son lot, mais au lieu de recevoir 640 des actions de Banque en question il reçoit en argent comptant \$48,737, et enfin le 15 Juin suivant Alexandre Molson reçoit aussi sa part des biens substitués et au lieu des 640 parts de Banque Molson il reçoit \$47,957, en argent.

Tout ceci est constaté par des actes authentiques reçus séparément pour chaque légataire et dans lesquels chacun d'eux déclaré connaître le testament suscite ainsi que la substitution et la clause d'inaliénabilité et d'insaisissabilité sus-mentionnées et ils promettent tous ainsi que les tuteurs à leurs enfants mineurs et les curateurs à chaque part substituée de se soumettre

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*continued.*

À compter de ce moment (Art. 746, C. C.) “Chaque copartageant est censé avoir succédé seul et immédiatement à toutes les choses comprises dans son lot, et n’avoir jamais eu la propriété des autres biens de la succession.” Chacun des légataires par ce partage librement consenté et accepté de part et d’autres entre majeurs est donc devenu propriétaire de la partie des biens substitués échue à son lot seulement et n’a jamais eu aucun droit sur ceux qui ont été compris dans les lots de ses co-légataires et ce rétroactivement au jour du décès du testateur (Art. 693, 703, et 704 C. C.). 10

Les Appelants ne contestent pas ce partage et n’en demandent pas la nullité. Alexandre Molson l’a accepté comme les autres et il ne me paraît pas possible du moins avec la preuve telle qu’elle existe au dossier de prétendre qu’il soit entaché de dol de fraude ou de collusion.

Ce partage étant valable et valablement fait nous n’avons pas à nous occuper des aliénations ou des transferts irréguliers ou non qui ont pu être faits antérieurement d’aucune partie des 3,200 actions en question, surtout quand par le partage ceux qui ne reçoivent pas de parts de Banque en reçoivent la pleine valeur en argent.

Ces transactions antérieures au règlement final à une époque où les actions en question pouvaient être légalement vendues d’après les termes formels du testament ne peuvent être contestées pour les motifs allégués par les Appelants et encore moins servir de base à un recours en dommage contre la Banque. 20

En résumé ce sont les biens composant les lots de chaque légataire qui ont été frappés de substitution entre leurs mains et c’était ces biens qu’il était du devoir non pas des exécuteurs dont le rôle était terminé par le partage mais des grevés eux-mêmes des tuteurs aux appelés-nés et des curateurs aux appelés non-nés de conserver et de placer de manière à ce qu’ils pussent être rendus intacts aux appelés lors de l’ouverture de la substitution. 30

Les Appelants ont invoqué un autre moyen :

Ils disent que pour disposer valablement des biens ou en placer le produit le testament exigeait que deux des exécuteurs dont un devait être William Molson devaient toujours concourir et que malgré que Joseph D. Molson eût été nommé pour remplacer sa mère défunte les deux autres l’ont toujours ignoré et ont même refusé de le reconnaître et que le transfert des 640 actions à Alexandre Molson ayant été fait par William seul à Alexandre seul ce transfert est illégal nul et la Banque responsable.

Ce moyen ne peut pas être invoqué par les Appelants :

1°. Parceque le Curateur Stewart est appelé à protéger les biens échus au lot du grevé Alexandre Molson et que les actions de Banque en question n’en ont jamais fait partie : 40

2°. Parcequ’en supposant même que le transfert attaqué ne fut pas régulier le grevé Alexandre Molson et l’appelle son fils ne peuvent pas demander que le prix de ces 640 actions dont la valeur en argent a déjà été payée au premier lois de partage de la succession de son père lui soit encore payé une seconde fois.



En résumé cette Cour est d'opinion :

1°. Que par la loi antérieure à la promulgation du Code Civil les biens meubles pouvaient être l'objet d'une substitution.

2°. Que par une disposition expresse du testament du dit Honorable John Molson ses exécuteurs étaient autorisés dans le but d'arriver au partage des biens substitués à vendre aucune partie d'iceux et à en partager le produit entre les légataires si la chose était nécessaire ou avantageuse ce dont ils étaient les seuls juges.

3°. Que par le partage fait entre les légataires alors majeurs des biens de leur père Alexandre Molson a reçu en argent un montant égal à la valeur des 640 parts qu'il réclame de nouveau dans la présente cause et que en conséquence il n'a jamais été propriétaire des dites actions qui n'ont jamais formé partie du lot qui lui est échu.

4°. Que les Appelant ne peuvent exercer aucun recours en dommages contre la Banque sans prouver la faute et la négligence de cette dernière et la perte de la valeur des dites actions pour les appelés à la substitution tandis que la preuve constate que le grevé en a reçu le montant entier en vertu d'un partage librement consenté avec ses co-héritiers.

L'appel est en conséquence renvoyé et le jugement de la Cour Supérieure confirmé pour les motifs ci-dessus énoncés seulement.

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*continued.*

I entirely agree with my colleagues upon the question of the validity of the substitution of the shares in question in this cause and in the rejection therefore of the "Considérant" upon which the judgment of the Court below was based. The provisions of our Code (C. C. 838 and 931) are in my opinion clear and unequivocal in their application to the matter under consideration and being so any attempt to go back on their promulgation and to attempt to establish an error or misconception or even omission on the part of the codifiers as the basis of a judgment at variance with the accepted text of the Code I consider unwarranted unnecessary and dangerous in the extreme. I concur with my colleagues in the confirmation of the judgment dismissing the original action but for another reason, viz., upon the ground that both under the general Bank Act and its own charter the Molsons Bank were not bound to see to the execution of the trust imposed by the will of the late Hon. John Molson upon his executors. The text of the statute incorporating the Molsons Bank (Chap. 202 Sect. 36 of 18 Vict.) contains this clause:—  
"The Bank shall not be bound to see to the execution of any trust expressed implied or constructive to which any of the shares of the Bank are subject." A condition subsequently adopted by the general Bank Act of 1871 in identical terms: "The Bank shall not be bound to see to the execution of any trust whether expressed implied or constructive to which any of the shares of its stock shall be subject." What can be the object and effect of this clause if it is not pertinent to and controllable of the present case I cannot understand.

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The testator wished by means of a substitution to make provision for the support and maintenance of his children and grandchildren to the full degree allowed by law. He chose executors in whom he had confidence; his wife, his brother and his son and to them he bequeathed his property "in trust" to carry out all the stipulated provisions of his will including those in reference to substitution. They were directed to sell any real estate not specially devised and they were authorised if in making the apportionment and divisions of the residue they should deem it necessary or advantageous to sell any part of the said residue and in lieu thereof to apportion and divide the net proceeds of the sales thereof to do so. And it was also stipulated that "In all questions 10  
"touching the sale and disposition of any part of my estate or the investment  
"of moneys accruing from my estate or accruing thereto, the concurrence of  
"any two of my said trustees of whom while living my said brother William  
"Molson shall be one shall be sufficient." We have therefore the authority given by the will to sell bank shares or any other asset of the estate and the manner of doing so is also stipulated to be by the signature of two of the executors of whom William Molson if living was to be one. One portion of the estate consisted of 3,200 shares in the capital stock of the Molsons Bank which after the death of the testator were properly registered in the Bank's register of shares as belonging to the executors. An equal division of these shares among 20  
the legatees named in the will would have entitled Alexander Molson the testator's youngest son and one of the executors of the will to 640 shares and therefore such a division of them in the exact terms of the will would have required a *pro formâ* transfer by said Alexander Molson and one other of the executors in their quality as such to himself as a legatee but to comply with the trust imposed on them by the will the executors should in such a case have seen to it either that the condition of substitution appeared in the transfer or that the money or other property accepted by them as the consideration for such sale and transfer was properly invested or entailed as affected by the substitution. The executors therefore had ample power to sell the shares 30  
but were under obligation in fulfilment of the trust imposed upon them to protect the substitution either in connection with these identical shares or their equivalent in some other form. On the 5th of April 1871 an ordinary transfer was registered with the Bank whereby William Molson and Alex. Molson as executors of the will of the late John Molson (the widow having previously deceased) transferred to said Alex. Molson unconditionally 640 of the estate's shares in the capital stock of the Bank being his exact proportion of the whole number if a division were to be made equally between the five legatees under the will. The Bank accepted the transfer as it had a right and was bound to do. The only questions which they were bound to investigate were the 40  
quality and powers of the vendors which covered as I contend the precise limitation of the Bank's responsibility. In these respects the test was complete.

The vendors were two of the executors and one of them was William Molson whose participation in such sale was specially required by the will. Their powers were ample for the testator had expressly stipulated that "if the  
"trustees deemed it advantageous to sell any part of the residue and in lieu

“thereof to apportion the net proceeds thereof it should be competent for them so to do.” No one could have therefore complained of their action or would have been injured by it had the executors carried out the provisions of the special trust imposed upon them under the will and caused an equivalent portion of the estate or of ready money to be properly substituted. Whether they had done so or not the Bank had no interest in or means of knowing. It had a right to suppose that the trustees whom the testator had selected because of his confidence in them, were properly discharging their trust, at all events the testator had not imposed that burden upon the Bank by the terms of his

10 will and the charter had relieved it of any such responsibility by express terms. The Act of partition which the executors had previously made of the estate between the legatees and to which so much reference is made in Appellants’ factum was not communicated to the Bank which had therefore no means of knowing whether the transfer of the 640 shares of its capital stock by the executors to Alex. Molson was a *pro formâ* transfer in fulfilment of an Act of partition or an ordinary sale. It had only to see that the will gave to these two trustees vendors a right to sell these shares which it certainly did and the objection that the two trustees were selling to one of themselves, a proceeding irregular under ordinary circumstances, lost its significance in the case under

20 consideration as the will stipulated such a division, and if the condition of substitution was omitted in this case the Bank had a right to presume that the executors had discharged their trust in this respect by securing its recognition upon the proceeds of said sale or other property of equivalent value. If a Bank under such circumstances is bound to see to the execution of the details of such a trust then a testator has only to invest his property in Bank shares select the most irresponsible trustees and feel that he has secured by operation of law the gratuitous services of a bank corporation for all time to come to took after the faithful administration of his estate, a liability which no bank would assume and from which the statute has expressly exempted them. The

30 corresponding clause in the English Joint Stock Companies Act varies slightly from our own in the words used which are as follows:—“No notice of any trust expressed implied or constructive shall be entered on the register or be receivable by the registrar,” 25 and 26 Vict. (1862) 89 sec. 30. The English jurisprudence clearly supports the view I have stated as to the exemption of the Bank from liability in the present case. In *Société Générale de Paris v. Tramways Union Co.* 14 L.R. Q.B.D. p. 453 Lindley, L. J. said referring to the above section of the English Act: “In the face of this enactment it is difficult to hold that companies are bound to pay any attention to notices of equitable interests in shares” and he held distinctly in that case that a

40 company was not bound to prevent a transfer of its shares simply because notice of a trust or equitable security had been given to them. In *Perkins and Mexican Santa Barbara Mining Company* 24 Q.B.D. p. 616 Lord Coleridge said:—“It seems to me extremely important not to throw any doubt on the principle that companies have nothing whatever to do with the relations between trustees and their *cestuis que* trust in respect of the shares of the Company. If a trustee is on the Company’s register as the holder of shares the relations which he may have with some other persons in respect of the

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“ shares are matters with which the Company have nothing whatever to do.” See also for older decisions *Hartage v. Bank of England*, 3 Vesey, jr. 57; *Bank of England and Parsons* 5, Vesey jr. 665; *Bank of England and Lunn* 15 Vesey jr. 569.

In our jurisprudence the case of *Simpson v. The Bank of Montreal* is the only one throwing any light upon the question under consideration and that only inferentially. In that case this Court and eventually the Privy Council held that a sale of Bank shares made by a tutor unauthorised by a family council was invalid and the Bank which had given effect to such a transfer in defiance of an express formal written protest by the sub-tutor was held liable to make good the loss to the minor. That judgment was based upon the total lack of legal right on the part of a tutor to make such a sale. Mr. Justice Baggelly in rendering the judgment of this Court said: “ It was the duty of the Bank to ascertain that the powers of the transferor or assignor of the stock in question were sufficient in law for the purpose of allowing the transfers to be made, but no such precaution appears to have been adopted,” and later on in speaking of decisions where the right of executors to dispose of Bank shares had been recognised, he added “ but it must be observed that the legal title of the executor and that of the tutor are not coincident.” “ The purchaser,” he says, quoting with approval from Vice-Chancellor Leach in the case of *Heane and Roberts*, “ has a right to assume than the executor sells in the necessary course of his administration and it is upon this principle altogether indifferent what dispositions may be made by the will with respect to the personal property for which he deals for whether it be specifically given or be part of the residuary estate it is equally charged by law with the payment of debts; if it were otherwise the powers of an executor would be wholly inadequate to the administration of the testator’s estate.”

In the same case of *Simpson and Bank of Montreal* their Lordships of the Privy Council remarked: “ We are of opinion that the act of the tutor, exceeding the limits of his power and the scope of his authority, is actually null ” and in support of this position their Lordships cited Pothier “ *Traite des Personnes* ” Part I., titre vi., Art. 3, Sec. 2: “ Une vente qui excède les bornes au pouvoir du tuteur n’est pas plus à cet égard le fait du mineur que ne le serait le fait d’un étranger qui serait avisé de vendre cet immeuble.”

The case under consideration presents the exact contrast to that of *Simpson and the Bank of Montreal*. In the latter the vendor had neither the quality nor the authority to sell while in the present case the executors had all the apparent qualifications necessary for such a transaction and only fell short of their duty in giving effect to the trust which the will had imposed upon them and from attention to which the Bank was specially exempted. The case of *Sweeney and Bank of Montreal* 5 L. No. 66 and 12 L.B.H.L. and P.C. 617 has no relevancy for the subject in controversy was not the liability of the Bank for allowing an improper transfer of its own shares but a purchase for its own use from a trustee of shares in a commercial corporation the Montreal Rolling Mills.

Nor is the case in point of *Carter and Molson* growing out of the action of the same executors in disposing of portions of the same estate of the late

Hon. John Molson inasmuch as that case had to deal with the subject matter itself of the sales just as it would have been in this case if the action had been directed against the actual holders of the Bank shares and the delinquent executors had been made parties to the action. How different the present case taken in the name of the offending executor himself against the Bank which he had misled; a bank which was only a registering office of the transmission of shares in which it had no interests either before or after transmission. That the Bank is only a registering office for the transfer of its shares and not a party to such transfer is evident from reference to the original Bank Act 13 and 14 10 Vict., cap. 21, Sec. 26 by which it was stipulated that all transfers were to be made in triplicate one copy for the Bank one for the Superior Court and one for the Registry Office. Almost all the argument in Appellant's factum as was the judgment of the Privy Council in the case of Carter and Molson is a powerful arraignment of the executors William Molson and Alexander Molson for their inattention to the trusts imposed upon them by the will and would apparently be unanswerable in an action against them or their successors by the grandchildren of the testator whose rights have been prejudiced but it is difficult to see its relevancy in the case actually under consideration.

ROBT. N. HALL, J., Q. B.

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IN THE PRIVY COUNCIL.

No. 36 of 1894.

ON APPEAL FROM THE COURT  
OF QUEEN'S BENCH FOR LOWER CANADA.

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SIMPSON *et al.*

*versus*

MOLSONS BANK.

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RECORD OF PROCEEDINGS.

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FREEMAN AND BOTHAMLEY,

13, Queen Street, City, E.C.,

*for Appellants,*

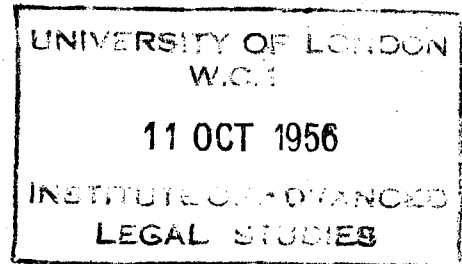
PAINES, BLYTH, AND HUXTABLE,

14, St. Helen's Place, E.C.,

*for Respondents.*

p. 3716.

29391



*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Simpson and others v. Molsons' Bank, from the Court of Queen's Bench for Lower Canada, Province of Quebec ; delivered 23rd February 1895.*

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Present :

THE LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Shand.*]

The Honourable John Molson died on the 12th July 1860 leaving a will dated the 20th April of that year, and this appeal from a judgment of the Court of Queen's Bench for Lower Canada relates to 640 shares in The Molsons' Bank Canada which formed part of the residue of his estate. The complaint of the Appellants is that the Bank, the Respondents, wrongfully registered in the books of the Bank a transfer of these shares granted by William Molson and Alexander Molson executors under the will, in favour of Alexander Molson the testator's son, to the loss and injury of the Appellants, as having right to have the shares secured to them under a substitution in favour of Alexander Molson's children contained in the will of their grandfather John Molson. Their

claim of damages has arisen in consequence of the insolvency of Alexander Molson who transferred the shares in question to third parties who cannot be affected by the substitution founded on.

By his will Alexander Molson made the following provisions relative to the residue of his estate:—

“ Tenthly. And as to the residue of my estate real and personal wheresoever the same may be and of whatsoever the same may consist of which I may die possessed or to which I may then be entitled I give devise and bequeath the same to my said brother William Molson of the said city of Montreal Esquire Mary Ann Elizabeth Molson my beloved wife and Alexander Molson my youngest son now living the survivors and survivor of them and the heirs and assigns of the survivor of them upon the several trusts hereinafter declared that is to say upon trust, firstly to hold administer and manage the said residue of my estate to the best advantage during the full term of ten years from and after the day of my decease . . . secondly to sell and convey all such parts of my real estate as are not herein-before specially devised and as they shall deem it advantageous to my estate to sell and to grant deeds of sale and conveyance of the same to receive and grant receipts for the purchase moneys to invest the purchase moneys and all other moneys arising from or accruing to my estate and not already invested on good and sufficient security either by way of hypothec or mortgage of or on real estate or by the purchase of Government stocks or stocks of sound incorporated banks so as to produce interest dividends or profits to secure the regular payment of the annuity payable to my said wife under her said marriage contract and the additional annuity herein-before bequeathed to her and generally to comply with and fulfil all other the requirements of this my will, and thirdly at or so soon as practicable after the expiration of the term of the said trust to account for and give the said residue as the same shall then be found to my residuary devisees and legatees herein-after named.

“ In all questions touching the sale and disposition of any part of my estate or the investment of moneys arising from my estate or accruing thereto the concurrence of any two of my said trustees of whom while living my said brother William Molson shall be one shall be sufficient.”

“ Thirteenthly. I further will and direct that at the expiration of the term hereinbefore limited for the continuance of the said trust the said residue of my estate real and personal as the same shall subsist shall under and subject



“ to the conditions and limitations hereinafter expressed fall to  
 “ and become and be for their respective lives only and in  
 “ equal shares the property of my said five sons and at the  
 “ death of each of my said sons or if any of them shall  
 “ have died before the expiration of the said term the share of  
 “ the one so dying or who shall have died shall become and be  
 “ for ever the property of his lawful issue in the proportion of  
 “ one share to each daughter and two shares to each son subject  
 “ however to the right of usufruct thereof on the part of his  
 “ widow if living for so long only as she shall remain his  
 “ widow it is my will however that it shall be and I hereby  
 “ hereby declare it to be competent to each of my said five  
 “ sons by his last will and testament or by a codicil or codicils  
 “ thereto but not otherwise to alter the proportions in which  
 “ by the foregoing bequest and devise a share of the residue of  
 “ my estate is bequeathed and devised to his lawful issue and  
 “ even to will and direct that one or more of his said lawful  
 “ issue shall not be entitled to any part or portion of the said  
 “ share of the residue of my estate anything herein contained  
 “ to the contrary notwithstanding.”

“ Sixteenthly. And I further will and direct that as soon  
 “ as it may be practicable after the expiration of the term  
 “ hereinbefore limited for the continuance of the said Trust  
 “ the said Trustees shall apportion and distribute the said  
 “ residue of my estate to and among the parties entitled thereto  
 “ as hereinbefore directed taking care in such apportionment and  
 “ distribution to provide (as far as may be possible and in such  
 “ manner as the said Trustees may deem best) as well against  
 “ risk of the capital of any of the shares being lost in the  
 “ hands of any holder thereof under substitution or as  
 “ usufructuary thereof as against risk by reason of my said  
 “ engagement under the marriage contract above referred to  
 “ of my sons John and Alexander and if in making the  
 “ apportionment and division of the said residue the said  
 “ Trustees shall deem it necessary or advantageous to sell any  
 “ part of the said residue and in lieu thereof to apportion  
 “ and divide the net proceeds of the sales thereof it shall be  
 “ competent for them so to do anything hereinbefore to the  
 “ contrary notwithstanding.”

The widow of the testator died in 1862. By her husband's will she was entitled to appoint a trustee and executor to succeed to her and act in the trust in her stead after her death, and in May 1861, professing to exercise this power, she executed a deed by which she nominated Joseph Dinham Molson, one of her sons, to be a trustee and executor. For some reason which does not appear his appointment was objected to by the

testator's brother William Molson, one of the two executors named in the will, and though on the 17th April 1863 he served a notice of his appointment on the executors, he took no further steps to insist on his claim to act, and never did act as a trustee; so that William Molson, the testator's brother, and Alexander Molson, the testator's son, were in point of fact the only trustees and executors who acted in any way in the trust after the death of the testator's widow.

The shares in question were part of a larger number, viz., 3,200 shares of the Bank which belonged to the testator at his death. The dividends on all of these shares were paid as they fell due to the testator's trustees and executors, but it was not till the 11th May 1866 that the shares were transferred to them in the books of the Bank. On that date the transfer was made by a journal entry to this effect:—  
 “ Declaration number twelve dated 11th of May  
 “ 1866 Honourable John Molson” (that is the name in which the stock stood) “ debtor to  
 “ executors viz. William Molson and Alexander  
 “ Molson for transmission, three thousand two  
 “ hundred shares of stock of fifty dollars each,  
 “ one hundred and sixty thousand dollars.”

The period of ten years for which the trustees were directed to hold and administer the residue of the estate expired on the 12th July 1870, and early in 1871 the executors prepared and submitted to the parties interested a statement of accounts, showing their receipts and expenditure in the execution of the trust, and a statement of the assets of the residuary estate, including the 3,200 shares in the Bank. Some time thereafter, viz., on the 5th April 1871 five transfers each for 640 shares granted by the executors were executed and duly registered

in the Bank's register of transfers. The transfer now in question and acceptance thereof were in the following terms:—

“ Schedule No. 39.

“ For value received from Alex. Molson of Montreal we do hereby assign and transfer unto the said Alex. Molson six hundred and forty shares on each of which has been paid fifty dollars currency amounting to the sum of thirty-two thousand dollars in the capital stock of the Molsons Bank subject to the rules and regulations of said Bank.

“ Witness our hands at the said Bank this fifth day of April in the year one thousand eight hundred and seventy-one.

“ (Signed) WILLIAM MOLSON } Executors late  
 “ (Signed) ALEX. MOLSON } Hon. John Molson.

“ I do hereby accept the foregoing assignment of six hundred and forty shares in the stock of the Molsons Bank assigned to me as above mentioned at the Bank this fifth day of April one thousand eight hundred and seventy-one.

“ (Signed) ALEX. MOLSON.”

A transfer was made in favour of John Molson, another of the testator's sons, of 640 shares in the same terms, while in the case of the other three members of the testator's family the transfers were given in the name of a person or persons designed as “tutor,” or as “tutor and “curator,” or trustee, with an acceptance of the stock signed by the transferee or transferees in that character, with the view of marking the stock in the hands of the transferee as being subject to a trust or substitution. There were thus two transfers in favour of the transferees, Alexander Molson and John Molson respectively, unqualified, and three transfers in favour of other members of the family, qualified in the way now stated. There have been produced in evidence certain deeds executed by the executors, by which a trust or substitution was created in regard to the shares included in each of the three last-mentioned transfers, so as to preserve the shares for the testator's grand-children, subject to their respective parents' right to the dividends during their lives; but these deeds were not in any way communicated to the Bank.

The first ground on which it was maintained in the argument for the Appellants, that the Bank had no right to register the transfer now in question in favour of Alexander Molson, was that the executors of John Molson had no power to grant any transfer of the shares in question after the lapse of ten years prescribed for administration. It was argued that the title of the trustees and executors was limited to administration, and was of a temporary nature only, expiring at the end of the ten years after the testator's death, during which they were directed to hold and administer and convert parts of the estate, and that the testator's sons, and their children respectively substituted to them, took their shares of the residue including the bank shares by direct gift and bequest from the testator under his will, which superseded and extinguished all title in the trustees and executors to grant any transfers. Their Lordships are clearly of opinion that there is no ground for this argument. It is true that the will provides under the head "thirteenthly," that after the lapse of ten years from the testator's death the residue of his estate shall fall to and become the property of his respective sons and their families substituted to them. But the legal interest in the whole estate real and personal was vested by words of direct devise and bequest in the trustees and executors, who had to make up their title, as they did, to the Bank shares for an administration directed to be continued for ten years; and at the end of that time these gentlemen were directed to divest themselves by "giving," that is by conveying or transferring the respective shares to the sons and their families, after settling the particular allocation and distribution which was to be made of the different parts of the residue of the estate. The sons and their families, whilst having right to their respective shares under the will, were thus

to acquire the legal title from the trustees in whom it had been vested for ten years. This appears clearly from the whole scheme of the will, and from nothing perhaps more clearly than the provision which was so strongly pressed upon their Lordships' notice, directing that the trustees and executors should take care to provide against the risk of the capital being lost in the hands of the testator's sons to the prejudice of their children, which they would do by a transfer of the legal interest in the different parts of the estate vested in them.

Assuming then that the title was to be granted by transfer from the trustees (and it is not easy to see how any title could otherwise be obtained after these gentlemen had been themselves registered as shareholders) it was maintained, not only that the trustees and executors were bound to execute transfers in such terms as would either give effect to the substitutions directed in the will in favour of Alexander Molson's grandchildren, or would at least give notice to any purchaser from Alexander Molson that the shares were affected by substitution, but further that the Bank were bound to refuse to register the transfer in question because of the absolute terms in which it was expressed. Their Lordships have not thought it necessary to call for any answer to the Appellants' argument on this point, as they entertain no doubt that the decision of the Court of Queen's Bench on this question should be affirmed.

It must be here observed that a question was raised in the Courts below, as to whether the substitutions provided for by the testator in his will, in so far as regards moveable estate, including the shares in question, could be made effectual under the law of Canada. Mr. Justice Taschereau, before whom the case came in the first instance, held that the substitution

could not be made effectual. This judgment was reversed on appeal, the learned Judges holding that the substitution could be made and was directed in such terms as might have been carried into effect. The point is fully argued in the Respondents' case, but the question has not been the subject of argument before this Board. For the purpose of the present appeal their Lordships will assume that it was the duty and in the power of the trustees and executors to see that either by transfers qualified as in the case of certain of the other children, or in some other way the substitution was provided for or declared.

The argument of the Appellants involves the consideration of two questions; first, whether the Bank had any notice, and if so what notice, of the trust created by the testator's will, in so far as the testator directed substitutions to be made to affect the divided parts of the residue of his estate; and, secondly, whether if the Bank had notice it was such as to make it the duty of the Bank to refuse to register the transfer in question because of the absolute terms in which it was expressed.

The Statute incorporating the Molsons' Bank (18 Vict. c. 202) contains this provision in Section 36, viz. :—“The Bank shall not be bound to see to the execution of any trust whether express, implied or constructive to which any of the shares of the Bank may be subject.” This language is general and comprehensive. It cannot be construed as referring to trusts of which the Bank had not notice, for it would require no legislative provision to save the Bank from responsibility for not seeing to the execution of a trust, the existence of which had not in some way been brought to their knowledge. The provision seems to be directly applicable to trusts of which

the Bank had knowledge or notice; and in regard to these the Bank, it is declared, are not to be bound to see to their execution.

Apart from the provision of the Statute it may be that notice to the Bank of the existence of a trust affecting the shares would have cast upon them the duty of ascertaining what were the terms of the trust; and that in any question with the beneficiaries, whose rights had been defeated by the absolute transfer in favour of Alexander Molson, the Bank, whether they had inquired or not, might have been held to have constructive knowledge of all the trust provisions. Assuming this point in favour of the Appellants, their Lordships however see no reason to doubt that by the clause in question the Bank are relieved of the duty of making inquiry, and that they cannot be held responsible for registering the transfer, unless it were shown that they were at the time possessed of actual knowledge which made it improper for them to do so until at least they had taken care to give the beneficiaries an opportunity of protecting their rights. In the present case their Lordships are satisfied that at the date of the transfer the Bank had not any notice which could warrant the inference that they were aware that a breach of trust was intended or was being committed. What amount of knowledge would be sufficient to imply that the Bank must know that a transfer is in breach of a trust is a question which must depend on the circumstances of each case. In the present case their Lordships do not find it necessary to consider what might be the legal effect of their having such knowledge, because they are satisfied that at the date of the transfer in favour of Alexander Molson the Bank had not any notice which was sufficient to bring to their knowledge, or to lead them to believe, that any breach of trust was being committed or

intended by the trustees or executors under the will.

The Bank had notice that the shares in question were acquired and held by William Molson and Alexander Molson in the character of trustees and executors for the execution of trust purposes. The entry of the transfer of the shares by transmission was made in their names as executors in the Bank's books, and the will of the testator, in virtue of which the transfer entry was made, directly gave devised and bequeathed the shares to them as trustees and executors for the execution of trust purposes. But it was maintained by the Appellants that the Bank had further notice, not only of the general trust created by the will, but of the terms of the particular trust in favour of Alexander Molson's children directed by the testator to be provided for by the trustees by way of substitution of them to their father Alexander Molson.

Their Lordships are, however, of opinion that it has not been proved that the Bank had any notice of this particular trust purpose, or at least any notice which could affect them with knowledge of the way in which it ought to have been executed by the trustees. The facts alleged and relied on by the Appellants as proof of such notice were (1) that a copy of Alexander Molson's will was in the possession of the Bank; (2) that in the case of the families of three of the testator's children notice of the substitution of grandchildren was contained in the transfers by the executors registered in the Bank's books in April 1871; and (3) that William Molson, the testator's brother and one of the executors, was President of the Bank, while Mr. Abbot, the law agent of the executors, was also the Bank's law agent, and as both of these gentlemen must be taken to have been fully aware of the detailed pro-



visions of the testator's will, the Bank through them, as its officers, had full knowledge of the trust. It is clear, however, that these facts are quite insufficient to prove the alleged notice.

The evidence does not clearly show how the Bank came into possession of the copy of the testator's will, which was produced by Mr. Elliott, the local manager. It may have been left with the Bank, as evidence of the title of the executors to receive the dividends on the shares which were paid to them from the first after the testator's death, or it may have been given to the Bank six years afterwards when the executors desired to have their title as owners by transmission registered in the Bank's books. It appears that on this last occasion a notarial declaration of the executors' title, which has not been produced, was presented to the Bank, in compliance with the provisions of their Charter, and the probability is that the copy of the will was then given to the Bank as evidence of the executors' right to have the shares transferred to them. The production of the will or probate at that time would be in accordance with the usual practice, which entitles the Bank to require evidence by production of the title in virtue of which the entry of any transfer of shares in the Bank's books is asked. But the only question with which the Bank were concerned was that of legal title. They had to satisfy themselves only that the will gave a right to the shares which entitled the executors to be registered as owners. They were not called upon, on an application to enter a transfer by transmission of the Bank's shares, to examine the will with reference to an entirely different matter which did not concern them, viz. the testator's directions as to the ultimate destination and disposal of his estate; and there is no reason to suppose that anything more was done

on this occasion than is usual in such cases. Again, the entries of transfers in favour of other members of the testator's family, in terms differing from that in favour of Alexander Molson, was not a circumstance calling in any way for the notice or attention of the Bank, and even if observed these gave no notice to the Bank that the shares transferred to Alexander Molson and to his brother John were held under similar trusts, to which effect should be given. It might well be that in the allocation and distribution of the residue entirely different arrangements would be in compliance with the testator's directions. Nor can the knowledge of Mr. William Molson as a trustee and executor, and of Mr. Abbott as law agent in the execution of the testamentary directions of the deceased, and the execution of the transfer in question, be imputed to the Bank so as to affect them with liability. It is not proved that these gentlemen or either of them intervened in any way in reference to the registration of the transfer in favour of Alexander Molson. But, apart from this, their knowledge was not that of the directors or manager of the Bank. They were clearly not agents of the Bank, so that notice to them could be regarded as notice to the Bank.

Their Lordships will on these grounds humbly advise Her Majesty that the appeal ought to be dismissed, and the Appellants must pay the costs.

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