

prietors from access to the highway, and she removed the road to the other side of her lots. The consequence was that the petitioner and the owners of the other parts of the land, only had a road, on the south-west side, as far as Mme. Girard's lots, but there they had to stop short. It appears that Mrs. Girard, who had bought from Moat *et al.*, had the faculty, by her deeds, of opening a road twenty feet wide only, either on the south-west or on the north-east side of the land. The petitioner having bought a piece of this land, with a road on the south-west side, shown by the plan to be a road or street fifty feet wide, complains that he has not got what he bought; and he further alleged that the lots are diminished thirty feet from the measurement given in the plan and book of reference.

"This demand is founded on articles 714 and 715 of the code of procedure, the first giving the grounds, not now necessary to be repeated, on which a Sheriff's sale may be vacated at the suit of a purchaser; the second giving the form of the demand in such case; and the petitioner is within the law in both respects. The demand is also based upon Articles 1508, 1509, 1510 and 1519 of the Civil Code. Art. 1508 says: 'The seller is obliged by law to warrant the buyer against eviction of the whole or any part of the thing sold, by reason of the act of the former, or of any right existing at the time of the sale, and against incumbrances not declared and not apparent at the time of the sale.' Art. 1509 is: 'Although it be stipulated that the seller is not obliged to any warranty, he is, nevertheless, obliged to a warranty against his personal acts; any agreement to the contrary is null.' Art. 1510 reads: 'In like manner, when there is a stipulation excluding warranty, the seller in case of eviction, is obliged to return the price, unless the buyer knew at the time of the sale the danger of eviction, or had bought at his own risk.' Art. 1519 says: 'If the property sold be charged with a servitude not apparent and not declared, of such importance that it may be presumed the buyer would not have bought, if he had been informed of it, he may vacate the sale, or claim indemnity, at his option, and in either case may bring his action so soon as he is informed of the existence of the servitude.' All the parties interested have appeared, and some of them contested the petition. They admit most of the facts, particularly the existence of this road on the south-

west side, and the exercise by Mrs. Girard of her option by changing the road to the north-east side, and the refusal to let the petitioner use the road shown on the plan. It is a principle of law, that the seizing party is responsible to the purchaser in the same way as his vendor would be; and in that respect the seizing party and the party seized are both responsible to the purchaser in the same degree; and if the sale is annulled, the creditors who have got the money coming from the forced sale of the land are bound to restore it. C. C. 1586-1587. Applying the articles previously cited to the circumstances of this case, I have no doubt the petitioner is entitled to the relief he asks. Therefore, the judgment is to annul the sale, and to order the parties collocated to restore the money, with costs against the contestants."

Cross, J. (*diss.*), considered that the description by the sheriff was correct. His honor was of opinion that the judgment should be reversed, and the *adjudicataire* held to his position as purchaser.

Sir A. A. DORION, C.J., remarked that the majority of the Court did not consider that any question of servitude came up here. It was a case that fell under Art. 714 of the Code of Procedure, which enables sheriff's sales to be vacated where the immovable differs so much from the description that it is to be presumed the purchaser would not have bought had he been aware of the difference. Here the purchaser bought according to a plan of subdivision regularly deposited in the Registry office according to law. By this plan, the lots which he purchased were shown to be on a street leading to the public highway, and this street was referred to in the minutes of seizure as a projected street, that is, one to be opened. But two years after the sale, this street was closed up by Madame Girard, who had obtained the right to do so by a deed from the appellants. There could be no doubt here that the respondent would not have purchased if he had been aware that there was no street communicating with the highway, and he was, therefore, entitled to the relief granted to him by the judgment appealed from.

RAMSAY, J., concurred that the description was insufficient, as taken in connection with the plan which was there to be looked at. Besides this, the projected street at the time actually existed in nature, and was visible; there was no paved way, but it was used as a road. The property sold was described as bounded by a projected street, but when it was examined this projected street was a street which ran not only along the back of the property, but a street which ran to the highway, and there was no other means of egress but by this street.

Judgment confirmed.

Coursol, Girouard, Wurtel & Sexton for appellants.

Duhamel, Pagnuelo & Rainville for respondent.