

Abbott
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2. That the alleged defects complained of existed in the proceedings under the writ of *feri facias*, and, therefore, that the opposition should have been filed to the proceedings under that writ.

3. And that the conclusions of the opposition were inapplicable to an opposition to a writ of *venditioni exponas*.

Abbott, for plaintiff, cited:—41 Geo. III., cap. 7, § 11, No. 1887, *Douglas vs. Darinon & Darinon*, Sept. Term, 1856. *Thibert v. Lepage, & Lepage*, opposant, Montreal, 31st January, 1848. *Allard v. Leapérance*, 1 L. C. Rep. 155.

The Court (C. Mondelet, J., dissenting) appeared to be of opinion that notwithstanding the prohibition contained in the Ordinance, an opposition might be received to a writ of *venditioni exponas* if the defects complained of originated in the proceedings under that writ; but rejected the opposition from the record, on the ground that the objections it contained might have been urged by an opposition filed within the ordinary delay to the writ of *feri facias*, and, therefore, the opposants were not in position to claim any exemption to the rule laid down by the Ordinance; and also on the ground that the conclusions of the opposition were inapplicable to an opposition to a sale under a writ of *venditioni exponas*, as they attacked the original seizure instead of merely demanding, as they should have done, that the proceedings under the *venditioni exponas* should be set aside.

Motion granted.

Abbott & Baker, attorneys for plaintiff.

Cherrier, Dorion & Dorion, attorneys for opposants.

(J.J.C.A.)

MONTREAL, 22ND DECEMBER, 1856.

Coram DAY, J., SMITH, J., C. MONDELET, J.

No. 706.

Joseph vs. Cay, & Cay, Opposant.

OPPOSITION—AMENDMENT—PROCEDURE.

In this case there were two motions: the first, on part of opposant, to amend the endorsement of his opposition to sale of moveables seized under writ of *feri facias*, by entering the number 706 instead of the number 760; the second motion, on the part of the plaintiff, that the said opposition be rejected from the record as having been improvidently filed in this cause, instead of cause No. 760.

McDonald was heard in support of the first motion, and *contra* the second.

Ramsay, against first motion, said there was nothing to be amended; the opposition in itself was bad in law, and could not serve the opposant, but to delay the case; and in support of the second motion cited the case of *Levenson vs. Cunningham, & Cunningham*, opposant, No. 363, S. C., Montreal, 1854.

The Court dismissed the first motion, and granted the second.

Amendment refused and opposition rejected.

David & Ramsay, attorneys for plaintiff.

McDonald, attorney for opposant.

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