

to her in her quality of universal legatee or usufructuary.

3. Where the garnishee declared that he could not state what he owed to the defendant personally, inasmuch as the account between them had not been adjusted, the plaintiff was bound to put the garnishee *en demeure*, and to give him time to settle his account with defendant, and then to have him complete his declaration within a certain delay.

4. The Court, at the final hearing of a contestation of the declaration of a garnishee, has a right to revise a ruling which maintained an objection made by the garnishee to declaring what he owed to a universal usufructuary personally.

The judgment in appeal is as follows :—

“ La Cour, etc....

“ Considérant que Dame Anathalie Trudel, veuve de feu David Laurent, en qualité d'usufruitière universelle du dit feu David Laurent, est tenu avec ses co-défendeurs au paiement du jugement rendu sur l'action en cette cause ;

“ Considérant que le tiers saisi était tenu de déclarer, non seulement ce qu'il pouvait devoir à la défenderesse en sa dite qualité d'usufruitière universelle, mais encore ce qu'il peut lui devoir personnellement, et que la Cour Supérieure, dans le jugement rendu à Montréal, le 31 Mars 1876, et dont est appel, a erré en ne mettant pas le dit tiers saisi en demeure de compléter sa déclaration ;

“ Considérant que le jugement dont est appel est erroné sous ce rapport, et que l'état du dossier ne permet pas de rendre un jugement définitif sur la contestation, vu que la déclaration du tiers saisi est incomplète, et que l'interrogatoire du dit tiers saisi a été erronément limité par le juge de première instance ;

“ Adjudge et ordonne que le dossier en cette cause soit retransmis devant la Cour Supérieure, pour que le tiers saisi y complète sa déclaration dans le délai, et au jour à être fixé par la Cour Supérieure, ou soit mis en défaut de la compléter, et pour qu'il y soit procédé ultérieurement sur la contestation et la saisie arrêt, frais réservés pour suivre l'issue du procès suivant l'adjudication ultérieure de la Cour Supérieure.”

R. & L. Laflamme for appellants.

Loranger, Loranger & Beaudin for respondent.

Hon. T. J. J. Loranger, counsel.

COURT OF REVIEW.

MONTREAL, Dec. 29, 1879.

JOHNSON, JETTÉ, LAFRAMBOISE, JJ.

LALONDE V. ST. DENIS.

[From S. C., Montreal.

Donation—Purchaser of the immovable donated bound by the obligations of the donee.

The inscription in Review was from a judgment of the Superior Court, Montreal, Rainville, J., July 7, 1879.

JOHNSON, J. The plaintiff, according to custom in this country, gave all her property to her son, among whose obligations was one to furnish a cow while he kept the property. He supplied his mother with the cow, as he had agreed to do ; but he, some time afterwards, sold the property to the defendant, who assumed the son's obligations to the plaintiff. Mother and son lived together à la fortune du pot for some time in execution of the deed of donation ; but when the property changed hands, he sold the cow that had hitherto been used by the old lady, who now sues the defendant for the value of the milk. He, the defendant, is no doubt in the shoes of the son, who was the original *donataire* ; and he pleads to the action that the plaintiff permitted, and consented to, the sale of the cow by her son. This, however, is not proved. Then, the defendant pleads that by the terms of the donation the donee was indeed to furnish a cow, which he did ; but was only obliged to furnish another to replace it in case of its death or sickness. The judgment now in review condemned the defendant to pay \$15, and we confirm that judgment. It appears to us quite certain that the defendant is bound to execute the obligations of the donee, who was held to furnish a cow, which the plaintiff is entitled to have and use ; and as long as she does not lose possession of it by any act of her own, she is entitled to have it replaced. It is not because the original donee bound himself specially to furnish another in certain cases that he, or the defendant who is now in his place, should be absolved from furnishing a cow at all.

Judgment confirmed.

Loranger & Co. for plaintiff.

Doutre & Co. for defendant.