

acceptation, by word or deed, is subordinate to the principle of the *res judicata*, which creates a presumption *juris et de jure*, between the parties. Pothier puts this very clearly in the *Cout. d'Orléans*, cited by appellant, p. 595 4to. Ed.

I don't think the *appelés* have anything to say in the matter. I am therefore to reverse.

SUPERIOR COURT.

MONTREAL, Dec. 23, 1882.

Before TORRANCE, J.

MANTHA V. SEGUIN.

Capias—*Secretion*.

The defendant refused to deliver wood according to contract, demanding a higher price than had been stipulated in a notarial agreement. Held, that this was not a secreting, and the capias issued against him was quashed, without costs.

PER CURIAM. The question here was the merits of a *capias* taken against the defendant for the sum of \$625. The ground was that he was secreting his estate.

The parties were dealers in wood. The defendant lived at Plantagenet in Ontario, and undertook by a notarial agreement, in October, 1880, to deliver to the plaintiff in 1881, 450 cords of wood, with cribs, at the Bord au Plouffe. The consideration was the sum of \$450. \$100 was cash, and \$100 was payable in the winter, and the balance on the delivery of the wood. The wood was not delivered in 1881, owing, it would appear, to the low water in the rivers. Of the winter payment, \$75 was paid, leaving unpaid \$275. The wood was ready at the Bord au Plouffe on the 24th July, 1882, but Seguin was not ready to deliver without an increase of price as a compensation for not having received the whole of the second instalment of \$100 in the winter, namely \$25, though there is no proof of his having asked for it, and, on the contrary, he asked for and received \$50. Seguin says himself in his deposition, folio five, that he refused to deliver without being recompensed. The fact was that the price of wood had advanced, and Seguin was interested in demanding a higher price, but it was contrary to his agreement. Mantha then tendered the balance of the price, \$275, which was refused, and a seizure took place accompanied by a *capias*, on the ground of secretion.

I do not consider that secretion has been proved. On the contrary, my conclusion is that it has been disproved. At the same time, I have no doubt that Seguin alarmed Mantha by his acts as well as his words. I hold that the probabilities are that Seguin was in easy circumstances, possessed of land and moveables at his domicile. The trouble was brought on by his greed in endeavoring to make a better bargain with Mantha. After the attachment and *capias* friends endeavored to make peace, and I commend them for it, but they failed though nearly successful. Mantha offered a sum of money for a settlement, and the offer was at first entertained, though finally abandoned by mutual consent. It is to be regretted that the wiser counsels did not prevail. My conclusion is that the petition should be granted, but in view of the circumstances of the case, and the blameworthy conduct of Seguin, it is ordered that each party pay his own costs on the petition now disposed of.

Petition granted.

Madore for plaintiff.

Augé for defendant.

COUR SUPÉRIEURE.

MONTRÉAL, 14 mars 1881.

Coram RAINVILLE, J.

LOUIS DUPUY es-qualité v. MICHEL BOURDEAU, et ALEXIS CHÉRI BOURDEAU, opposant *afin de charge*, et OCTAVE PINSONNAULT, opposant *afin de conserver*, contestant.

Bail—*Opposition afin de charge*.

PER CURIAM. Le demandeur ayant fait saisir un immeuble sur le défendeur, l'opposant a produit une opposition *afin de charge*, demandant que la vente n'ait lieu qu'à la charge de son bail. Il allègue un bail authentique pour l'espace de huit ans, et l'enregistrement de ce bail en date du 29 novembre 1878. Cette opposition est contestée par Pinsonnault, qui allègue :

Que par un acte de vente dûment fait et passé le 23 mai 1868, devant M^{re} Labelle, notaire public et témoin, au dit lieu de St. Michel Archange, le dit opposant et contestant, vendit au défendeur, Michel Bourdeau, fils, la terre désignée au dit acte produit comme partie des présentes et qui est la même que celle saisie en la présente cause, à la poursuite du demandeur Dupuy, es-qualité, et à laquelle s'applique la dite opposition *afin de charge* ;