

SUPERIOR COURT.

SHERBROOKE, March 31, 1879.

DOHERTY, J.

*McLAREN v. DREW, and DREW, opposant.

Second seizure of lands while opposition to first seizure is being contested.

On the 25th February, 1878, the Sheriff, under a writ *de terris*, issued in this cause, made a seizure of certain lands of the defendant to satisfy plaintiff's judgment, and the sale was advertised for the following July.

The defendant opposed the sale on the ground alleged, and subsequently proved, that the same lands were then under seizure by the said Sheriff in a case of *Camirand v. Drew*, which seizure was opposed by the defendant, and the sale thereunder suspended during the trial of the opposition.

The writ of execution in the case of *Camirand v. Drew* had been returned by the Sheriff into Court, prior to the second writ coming into his hands, together with the opposition which was still before the Court, yet undecided.

The opposant pretends that by virtue of Articles 642 and 643 of the Code of Civil Procedure, the seizure of these lands in the case of *Camirand v. Drew* still subsists, and that therefore the Sheriff had no right to seize the same lands under a second writ, but should have noted such second writ as an opposition for payment.

This pretention is unfounded. The Articles of the Code cited by opposant apply only to cases where the first writ remains in the hands of the Sheriff. After the writ is returned by him into Court with an opposition which, perhaps, is being stoutly contested in the different Courts, how can the Sheriff note as an opposition any second writ placed in his hands? He no longer holds the first writ; it would not only be inconvenient, but impossible for him to note it; and it would be manifestly unfair to compel other creditors to wait about collecting their debts until the opposition to the first seizure should be determined.

This opposition is, therefore, dismissed with costs.

Brooks, Camirand & Hurd, for plff. contesting.

Calder & Hodge, for opposant.

SHERBROOKE, Nov. 10, 1879.

DOHERTY, J.

FULLER et al. v. SMITH, and FLETCHER, opposant.

Second seizure of lands while opposition to first seizure is being contested.

On the 17th April, 1879, the Sheriff under a writ *de terris*, issued in this cause, made a seizure of certain lands of the defendant to satisfy plaintiff's judgment, which was on a mortgage debt, for a large amount, with several years' interest in arrears.

Fletcher, a third party, and also a creditor of defendant, opposed the sale, on the ground that in May, 1878, one year previous, the Sheriff seized the same lands by virtue of a writ *de terris* issued in a case of his, Fletcher's, against defendant, and had advertised the sale thereunder for the 12th September, 1878; that this sale was stayed by an opposition *afin d'annuler*, made by defendant, which opposition, being contested, was still pending before the Court. The first writ *de terris* had been returned into Court by the Sheriff with the opposition, before the writ in the present cause was placed in his hands.

The opposant, Fletcher, relied on Articles 642 and 643 of the Code of Civil Procedure, claiming that the seizure in the case of *Fletcher v. Smith* still subsisted, and that the Sheriff had no right to seize the same lands under the second writ, but should have noted such writ as an opposition for payment.

This pretention of opposant is well founded. The Sheriff had no right to make a second seizure of the same lands while the first seizure subsisted. It made no difference whether the opposition to the first seizure was then pending in the Court here, or had been carried to appeal, or even to the Privy Council, with the whole record, the seizure still subsisted all the same, and the Sheriff's duty was to note any second writ placed in his hands as an opposition for payment.

The law did not require him actually to note it upon the first writ, but to the writ.

The opposition is therefore maintained with costs.

Brooks, Camirand & Hurd, for plffs. contesting.
Ives, Brown & Merry, for opposant.

* This and the following case of *Fuller v. Smith*, are contributed by Messrs. Brooks, Camirand & Hurd.