

Il y a au-delà de cent articles mentionnés au procès-verbal de saisie, et la preuve me paraît satisfaisante pour tous ces articles moins quatre : deux tapis, dix verges de toile peinte et un miroir, pour lesquels il n'y a aucune affirmation spéciale. Cependant, la preuve de l'opposante, qui n'a pas été contredite, établit en outre généralement que tous les effets dans la maison du défendeur appartiennent à l'opposante, sa femme, et lui ont toujours appartenu. Sous ces circonstances, je crois devoir déferer le serment à l'opposante pour compléter la preuve quant à ces articles, C. C. art. 1254."

The opposant having sworn to her property, the opposition was maintained.

The plaintiffs appealed on the ground of insufficiency of proof, and also because the judicial oath had been illegally submitted.

The Court held that under the circumstances the oath had been properly submitted, and the judgment was confirmed.

Judgment confirmed.

C. H. Stephens for Appellants.

Longpré & David for Respondent.

O'BRIEN (plff. below), Appellant, and WEAVER, (def. below), Respondent.

Sale—Price payable partly in stock not fully paid up, which the company refused to transfer to vendor.

The appeal was from a judgment of the Superior Court, Montreal, (Loranger, J.), dismissing the plaintiff's action.

The plaintiff, appellant, brought an action against the respondent to compel him to take a deed of three lots of land in Mount Royal Vale, near Montreal, and praying that respondent be condemned to pay him \$500 cash, and to transfer to him a sufficient number of fully paid up shares in the capital stock of the Montreal Railway and Newspaper Advertising Company, to make the equivalent of \$2500.

It appeared that respondent held fifty shares of the stock, on which \$55 per share had been paid, and \$45 per share was unpaid. He bargained with appellant to transfer this stock to him, and to pay him in addition \$500 cash, for the three lots in question. The company, however, refused to transfer the stock to appellant, on the ground that he would not be good for

further calls, if any were made. The respondent then wrote the following letter to appellant :—

" Montreal, 7th June, 1878.

" T. F. O'Brien, Esq.

" Dear Sir,—I am sorry that I cannot hold to my bargain for those building lots, that I chose last Tuesday afternoon, as the Directors of the Advertising Co. will not accept you as a guarantee, in case that any more calls are made. For further explanation please call on the President, A. W. Ogilvie, Esq., or myself.

" Hoping that there is no harm done as it is not my fault.

" I remain, Yours, &c.,

" A. O. W."

The appellant then tendered a deed for signature, and prayed that respondent be condemned to pay him \$500, and to transfer to him a sufficient number of fully paid up shares in the stock of the Company to make the equivalent of \$2500.

The respondent pleaded in effect that he never purchased the land or bargained for it in any other way or for any other consideration than the acceptance of the stock, and that the \$500 in cash was only agreed to be given for the purpose of getting the appellant to accept the stock, and thus relieve respondent from liability for further calls.

The judgment of the Court below dismissed the action : " Considérant que le demandeur n'a pas établi légalement et suffisamment que le défendeur soit jamais convenu avec lui d'acheter les lots de terre mentionnés en la déclaration pour trois milles piastres, cinq cents piastres payables comptant, et deux milles cinq cents piastres, la balance, par des actions payées dans la Montreal Railway and Newspaper Advertising Company, que le défendeur ne soit jamais engagé à signer un acte de vente à cet effet, et notamment, le projet d'acte de vente relaté en la déclaration, et que, conséquemment, il a failli à établir un droit d'action contre le défendeur dont il n'est pas nécessaire d'apprécier les défenses, voir l'absence de preuve du fait fondamental de la demande, a débouté et déboute le demandeur de son action, avec dépens."

In appeal,

The Court held that the action had been rightly dismissed. The agreement by respondent was to give the stock as it then was, 55 per cent.