Wellesley. The father had allowed the plaintiff to occupy 100 acres of the 400 acres, and he was to look after the whole and to pay the taxes upon them, but to take what timber he required for his own use, or to help him to pay the taxes, but not to give any timber to any one else or allow any one else to take it. He settled in 1849 upon the south half of lot 1 in the 13th concession. Having got a deed for the same in November, 1864, he sold the 600 acres to one M. K. In December following he moved on the north half of this lot No. 1, and he remained there ever since. The father died in January, 1877, devising the north half of the north half, the land in dispute, to the defendant, and the south half of the north half to the plaintiff. The defendant, claiming the north 50 acres of the lot by the father's will, entered upon it, whereupon the plaintiff brought trespass, claiming title thereto by possession.

The learned Judge at the trial found that the plaintiff entered into possession and so continued, merely as his father's caretaker and agent, and he entered a verdict for the defendant. The evidence showed an entry on the land within the last seven years, and thereby created a new starting point for the Statute, and a new tenancy at will.

Held, that the evidence shows that the respondent at first entered and continued in possession of the land in dispute as agent or caretaker for his father; and he subsequently acknowledged himself to be and agreed to be tenant at will to his father, within ten years; and therefore respondent had not required a statutory title.

Appeal allowed.

King, for Appellant.
Bowlby, for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 15, 1881.

DORION, C.J., MONK, RAMSAY, CROSS, BABY, JJ.

FULLER et al. (plffs. contesting opp. below), Appellants, & FLETCHER, (oppt. below), Respondent.

Execution—Second seizure of lands after the Sheriff has returned the first writ and procès-verbal of seizure.

This was an appeal from a judgment of the Superior Court at Sherbrooke (Doherty, J.), Nov. 10, 1879, maintaining an opposition. (See 2 Legal News, p. 388.)

The Sheriff for the District of St. Francis, on the 29th of March, 1878, seized the lands of S. E. Smith, at the suit of the respondent.

On the 21st July following Smith made an opposition to annul the seizure. The sale of the lands seized was suspended by this opposition, which was returned into the Prothonotary's office by the Sheriff on the 13th August, 1878, together with the writ under which the seizure had been made.

On the 29th March, 1879, the Sheriff seized, under a writ of execution issued by the appellants, the same lands previously seized at the instance of the respondent.

On this second seizure the respondent made an opposition to annul the sale, on the ground that the first seizure was still pending, and that a second seizure could not take place of the same lands until the first had been disposed of.

The appeal was from the judgment maintaining this opposition, and declaring the second seizure void.

The COURT, (per DORION, C.J.,) held that, under art. 642 C. C. P., the existence of a first seizure can prevent a second seizure only when the writ on which the first seizure has been made is still in the hands of the Sheriff. It is not possible for the Sheriff, after he has dispossessed himself of the first writ and *procès-verbal* of seizure, to note thereon, as an opposition for payment, any subsequent writ that he may receive. The provisions of C. C. P. 642, 643, suppose that subsequent writs of execution are placed in the hands of the Sheriff before the proceedings on the first seizure have been abandoned or suspended, and while the Sheriff is still in time to proceed to the sale on the advertisements made on the first seizure, and on the day fixed for the sale. Here, the second writ being placed in the hands of the Sheriff long after the day fixed for the sale, and the suspension of the whole proceedings by the return of the first writ, the appellants had no means of compelling the Sheriff to advertise the sale of defendant's lands on the first seizure, nor to fix a day for the sale, except as directed by the second writ.

Judgment reversed.

Brooks, Camirand & Hurd, for Appellant.
Ives, Brown & Merry, for Respondents.