sustains him in the pretension that these words only refer to cases where he takes the initiative. On the other hand, the creditor may say that the spirit of the clause is to prevent a claimant being interfered with in any way whatever by a proceeding of the insolvent unless he give security. If the claim be unfounded, it is for the assignee and creditors to interfere; that though the insolvent is pecuniarily interested in his estate, it is only subject to the claims of his creditors; that it would be unfair to the claimant to allow the assignee or creditors to instigate the insolvent, who is a man of straw, to raise a contestation in which he might be condemned to pay costs, which the assignee and creditors escape; that they might thus obtain, in an under-hand way, the opinion and judgment of the Court free of expense to themselves; that the same clause, s. 39, says that "the assignee, in his own name, shall have the "exclusive right to take, in the defence of all "suits, all the proceedings that the insolvent "might have taken for the benefit of the "estate," etc. My conclusion is that the insolvent in this case should not be allowed to contest without giving security. The *exception dilatoire* will therefore be maintained.

Lebourveau for insolvent.

Duhamel & Co. for claimant.

TUFTS v. BROWNRIGG et al.

Revendication of moveable by unpaid vendor under special contract—Third party receiving the same in bad faith.

On the 3rd May, 1878, plaintiff sold and delivered to defendant Brownrigg a soda water apparatus for the sum of $450, of which $17.47 was payable cash and the balance in nine monthly payments of $45 each, for which defendant Brownrigg signed his note, with these words: "Nevertheless it is understood and agreed by and between me and said James W. Tufts, that the title to the above mentioned property does not pass to me, and that until all the said notes are paid the title to the aforesaid property shall remain in the said James W. Tufts, who shall have the right in case of non-payment at maturity of either of said notes, without process of law, to enter and retake, and may enter and retake, immediate possession of the said property and remove the same." None of the notes were paid, and on 12th October, 1878, Brownrigg went into insolvency, having previously transferred to the defendant Tierney, his brother-in-law, the property in question in payment of an antecedent debt. The plaintiff revendicated the property in possession of Tierney, alleging the knowledge by Tierney of all the facts above stated. Tierney pleaded that when he bought from Brownrigg, the latter was in possession as proprietor, and that he bought for cash in good faith.

TORRANCE, J. The Court is satisfied that Tierney was not in good faith, and that he knew all the particulars of the possession held by Brownrigg, whose clerk he was at the time of the delivery to Brownrigg The defendant has cited *Brown* v. *Lemieux*, 3 Rev. Leg, which was in his favor in the Superior Court and in the Queen's Bench, but in appeal two of the Judges dissented, and the Court was differently constituted from the present time. The meaning of the stipulation by which the plaintiff claims the property is perfectly plain. I do not see anything immoral in the convention, preventing it from being binding upon the contracting parties as a law made between them, and it is proved to my satisfaction that Tierney, as Brownrigg's clerk, knew all about the agreement. I think therefore that plaintiff should have judgment.

Davidson & Cushing for plaintiff.

H. J. Kavanagh for defendant.

BREWSTER v. THE GRAND TRUNK RAILWAY COMPANY OF CANADA.

Enquête—There must be a formal closing of enquête before inscription for hearing on merits.

This was a motion that the inscription for hearing on the merits be struck, as premature, inasmuch as the case had not been regularly closed at the *Enquête* sittings.

Macrae, Q.C., for defendants moving, cited rule of practice 45. "That any cause inscribed on the *Role des Enquêtes* shall remain thereon, until the *enquête* in such cause shall have been declared closed, and shall be held to be continued from day to day without any special application to that effect. Provided always that if more than one day shall elapse without any proceeding or application in such cause, and without the same being specially continued to