

LEFEBVRE *es qual.* (opposant below), Appellant, and TURGEON (def. below), Respondent.

*Execution—Effect of Attachment in Insolvency, which is set aside on contestation.*

The appeal was from a judgment of the Superior Court, Montreal, 17 June, 1878, (Torrance, J.), dismissing an opposition *afin d'annuler* filed by the appellant, Honoré Lefebvre, in his quality of tutor. The respondent had caused an execution to be issued against the immoveables of Lefebvre personally, and he opposed the seizure as tutor to P. A. Lefebvre, a minor, issue of his marriage with Louise L'Esperance, deceased. The grounds of the opposition were that the immoveable seized as belonging to opposant personally formed part of the community which had existed between him and his deceased wife; and further, that when the seizure was made, a writ of attachment under the Insolvent Act of 1875 had issued against him, and he was no longer in possession of the immoveable.

The respondent contested the opposition on the ground that the appellant *es qualité* had no interest in alleging the insolvency of Honoré Lefebvre, on whom the immoveable in question had been seized. The respondent further alleged that Louise Lesperance was living, and the community existing, at the time of the seizure. That under art. 546 C.C.P., the death of the wife after execution had commenced could not affect the proceedings.

It was admitted that the community between Lefebvre and his wife was not dissolved until after the seizure. It was also admitted that at the time of the seizure a writ of attachment had issued against Honoré Lefebvre, but this writ was being contested, and it was subsequently quashed by the Court of Appeal.

The judgment of the Court below dismissed the opposition on these grounds:—

"Considering that the seizure under the Insolvent Act was invalid and null, and the seizure by the plaintiff was valid;

"Considering, moreover, that the opposant *es qualité*, is without interest, so far as appears, to oppose the seizure by plaintiff, doth maintain the contestation by said plaintiff to said opposition, and dismiss the said opposition with costs *distrains*," etc.

The appellant urged that a person subjected to the operation of the Insolvent Act is *de facto*

divested of his estate until the attachment is set aside; and therefore that he, appellant, had not possession of the immoveable from the date of issue of the attachment until the writ was quashed.

The respondent submitted:—"L'opposant *es-qualité*, représentant un tiers, savoir son enfant, n'a aucun intérêt à empêcher la vente du dit immeuble; la faillite du défendeur ne suspend pas de plein droit les procédés sur l'exécution; au contraire, en supposant même que le dit Honoré Lefebvre eût été réellement mis en faillite, le bref d'exécution aurait dû avoir son cours, et n'aurait pu être suspendu ou discontinué que sur un ordre de la Cour Supérieure à la requête du Syndic du défendeur. D'un autre côté, le décès de l'un des membres de la communauté sur le chef de laquelle l'immeuble en question avait été saisi, ayant eu lieu après l'exécution de la dite saisie, il n'y a aucun doute que son décès n'affecte en aucune manière les procédés commencés, et qu'en supposant que l'enfant mineur représenté par l'opposant *es-qualité* aurait accepté et la succession de sa mère et la communauté, il n'aurait pas pour cela le droit de demander la suspension de l'exécution."

The judgment was unanimously affirmed.

*Doutre & Doutre* for Appellant.

*Geoffrion, Rinfret, Archambault & Dorion* for Respondent.

THE SCHOOL COMMISSIONERS OF THE MUNICIPALITY OF THE TOWNSHIP OF ROXTON (defts. below), Appellants, and BOSTON *et al.* (plffs. below), Respondents.

*Position of Dissentients—Proof of Status.*

There were two cases of a similar character. The appeal in each case was from a judgment rendered by the Superior Court at Sweetsburg, setting aside the sale of lots of land in the township of Roxton, belonging to respondents, which had been sold by the Corporation of the Township of Roxton for school taxes alleged to be due by respondents on the lots, and also setting aside the adjudication, in one case to Lafontaine, and in the other to Bates, and declaring respondents to be proprietors of the lots. The respondents claimed that they had paid all taxes lawfully imposed on the lots; that the late John Boston, who was proprietor of the lots, was of a religious faith different