

the required consent was given, if the same limitation of the right of alienation was continued to the vendee.

Lacoste & Globensky for petitioners.

Geoffrion & Co., for defendant.

SUPERIOR COURT.

MONTREAL, June 18, 1879.

TORRANCE, J.

HIRD et al. v. FAUTEUX.

Insolvent Act of 1875, Sec. 136—Purchasing "with intent to defraud."

The plaintiffs complained of the defendant that on the 2nd August, 1878, they had sold and delivered to him goods of the value of \$188.54; and on the 6th August, 1878, goods of the value of \$249.77, in all \$428.31; that the defendant went into insolvency on the 20th August, 1878, and fraudulently purchased from plaintiffs the said goods, wares and merchandises on credit, knowing and believing himself, and having probable cause for believing himself, at the time of the purchase of said goods and each of them, to be insolvent and unable to meet his engagements, and, moreover, plaintiffs alleged that said defendant concealed the fact of such insolvency and inability to meet his engagements, and his knowledge and belief thereof, from the plaintiffs with the intent aforesaid, to wit, with intent to defraud the plaintiffs. The declaration accordingly concluded for the punishment provided by the Insolvent Act, 1875, section 136. The defendant pleaded the general issue.

TORRANCE, J. The plaintiffs have proved in general terms by William New the sale and delivery. The witness was not present at the sale, and says he does not know that defendant ordered the goods except by the order of Mr. Laferty, and that Mr. Fauteux said they were all right. This was said about the time of the defendant going into insolvency. I understand it to be after the estate had vested in the assignee. I do not see any proof that the goods were bought on credit. Mr. Laferty, who made the sale, is not produced as a witness. The other evidence as to the sale is supplied by the defendant and two of his clerks, Alphonse Marcotte and Michel Plouffe. The defendant says: "Pour bien dire je n'ai jamais acheté de marchandises de ces gens-là, et à l'heure qu'il est je ne les connais pas. Un Mr. Laferty est venu

me dire à ma maison qu'un monsieur me demandait au magasin. Je ne savais pas si c'était M. Laferty ou un autre; toujours est-il vrai que dans le temps ma toilette n'était pas faite et que j'étais pressé ce matin là; après m'être préparé, je me rendis au magasin, et là ce M. Laferty m'a fait part du sujet de sa visite: il m'a dit que c'était pour me vendre des marchandises. Je lui répondis que je n'avais pas besoin de marchandises. La-dessus il m'a dit: 'donnez vous le trouble de voir mes échantillons.' Après m'avoir longuement sollicité, j'ai regardé ses échantillons et je lui ai dit: 'je n'ai pas besoin de marchandises.' La-dessus je lui tournais le dos, et à ce moment-là, il s'est mis à dire: Tiens, tiens, je vais prendre un ordre, et je vais vous envoyer cela. A ce moment là je passais la porte, attendu que j'étais très pressé, mais je sais qu'il a pris un ordre de son propre chef, et qu'il a inscrit cette ordre sur un morceau de papier. Quand ces marchandises sont arrivées au magasin, j'ai donné l'ordre à mes commis de les mettre de côté, lui disant en même temps que je ne les prenais pas, parcequ'elles ne me convenaient pas."

Alphonse Marcotte, one of the clerks of the defendant, says that Laferty offered goods to Mr. Fauteux, and Mr. Fauteux told him that he did not want them. Michel Plouffe, another clerk, says the same thing, and adds: After which he (defendant) turned his back on Laferty and went off to attend to other business. Mr. Laferty then took an order and sent the goods. Plouffe is then asked, was it Mr. Fauteux who mentioned the goods. He answers, No. The goods which Mr. Fauteux mentioned he did not send. He had no samples of the goods that Mr. Fauteux wished. He says further that the goods were not checked and placed with the rest of the stock, because Mr. Fauteux had not bought them and did not wish to accept of them, seeing they did not suit him. They were put to one side. The clause of the Insolvent Act of 1875 applicable to the case, Section 136, contains these words: "Any person who, for himself, . . . purchases goods on credit . . . knowing or believing himself to be unable to meet his engagements, and concealing the fact from the person thereby becoming his creditor, with the intent to defraud such person, . . . and who shall not afterwards have paid the debt or debts so incurred, shall be held to be guilty