

Having established the validity of the appellant's title and its legal preference to that which the father of the respondent, Daniel Ayer, obtained from Heth Baldwin, it remains for us to consider the legal effects of the title obtained from the Sheriff of Montreal by John Ayer.

We are satisfied that this sale was effected by a fraudulent device on the part of Daniel and John Ayer, not to purge the lots in question of the mortgages with which they might be burthened, for no oppositions were fyled, but to create a title to them to the prejudice of the appellant, by substituting a Sheriff's sale in lieu of a title which was fraudulent and void.

The confession of judgment to Mr. Rolland upon condition that he would take in execution and sell these lots for payment of the debt due to him, and that this should be done immediately; the issuing of an unheard-of fieri facias in which these lots with many others were described by metes and bounds, and the Sheriff was commanded to sell them for the payment of the debt due to Mr. Rolland, together with the conduct of John Ayer at the sale, who, when the Sheriff had sold the lots which were first enumerated and described in the fieri facias for more than the amount of the sum which he was authorized to levy in principal, interest and costs, including the expenses of sale, and therefore declined to sell the lots in question, obliged the Sheriff to proceed and became himself the purchaser, are facts which compel us to say, that the sale of the lots in question by the Sheriff was obtained by fraud on the part of Daniel and John Ayer. In addition to this, it has been urged that the seizure and sale of the lots in question were *super non domino*, and the retroactive effect of the enregistration certainly goes strongly to confirm this opinion; for by that the appellant's title was perfected from the 29th of July, 1806, and in the eye of the law, the appellant has therefore been the true, legal proprietor and possessor of the lots seized from that day.—And the pretended *prise de possession* which the respondent has alleged, was a trespass (*voie de fait*;) and upon any