

necessary to give said petitioner such possession, and even by force, and the expulsion of A. E. Goold, should he refuse to give up willingly the possession of the tracts of land purchased by the petitioner."

MACKEY, J., remarked that Art. 712 C. P. only contemplates the case where the refusal to deliver is by the *saisi* himself, and not by a third party.

Petition rejected, "because said Goold referred to is a third person, and has had no notice of this petition, but more because said defendant makes no resistance and is not ruled, and is the only person against whom, by possibility, such a petition could be worked, from what now appears."

R. & L. Laflamme, for petitioner.

BEAUHARNOIS, May 26, 1879.

BELANGER, J.

BOULERISSE v. HEBERT.

Lessor and Lessee—Delay for summons—One non-judicial day sufficient.

A writ in ejectment, under the Lessor and Lessee Act, was served on Saturday and returnable on Monday. Defendant by *exception à la forme* pleaded that the day was insufficient, and cited *Metayer dit St. Onge v. Larichelière*, 21 L. C. J., page 27.

BELANGER, J., said that by Art. 75 of the Code of Civil Procedure the delay in these cases is "one day only." By Art. 890 C. C. P. it is "one intermediate day." Art. 24 C. C. P. says "that delays continue to run upon Sundays and holidays." He had found four decisions on the point, two each way. As the Code did not require the intermediate day to be judicial, he thought the decisions holding the delay to be sufficient should be followed.

Exception à la forme dismissed.

L. A. Seers for plaintiff.

Thomas Brossoit for defendant.

BEAUHARNOIS, June 7, 1879.

AMIOT v. TREMBLAY et al., and REID, contesting.

Privilege—Registration.

BELANGER, J. This is a contestation of the items Nos. 8, 9, 10, 11 and 12 of a report of distribution prepared by the Prothonotary, of the proceeds of a sale made by the Sheriff of

the defendant's property. By the items of said distribution one J. B. Damour and the plaintiff are collocated for a certain amount.

The facts of the case may be resumed as follows: On the 21st September, 1867, one Antoine Prud'homme, whom the contesting party pretends to represent in her quality of universal legatee and testamentary executrix, sold and transferred a certain piece of land to Antoine Reid, by a deed passed before J. Pelletier, Notary, for the price of \$516 payable as follows: \$66 cash and the balance by yearly instalments of \$50, the first instalment becoming due on the 1st April, 1868. It was stipulated in a special manner in the deed that the land was to be mortgaged as security for the payment of the sum remaining due by privilege of *Bailleur de Fonds*. The 2nd August, 1869, Antoine Reid sold the same piece of land to Emerilde Tremblay, the defendant, then a minor child represented by his father Pierre Tremblay, by a notarial deed. The first deed, *i. e.* the sale from Antoine Prud'homme to Antoine Reid, was duly registered on the 7th August, 1876. The second deed was never registered. On the 26th November 1874, two years previous to the registration of the said first deed, the defendant, then an absentee acting and represented by his attorney Pierre Tremblay, acknowledged to owe and promised to pay to the plaintiff the sum of \$148.72, and gave and made an obligation before notary bearing date 26th November, 1874, for said amount. The defendant, as security for the payment of said amount, gave a mortgage on the piece of land in question in favor of the plaintiff, which was registered on the 30th November 1874. On the same day, 26th November, 1874, the defendant acting by his attorney duly appointed, made another obligation in favor of J. B. Damour for the sum of \$98.20 and interest, and mortgaged the same land. This last deed was registered on the 2nd December, 1874. The 22nd November 1875, Antoine Prud'homme, the vendor mentioned in the first deed of sale, made his last will wherein he institutes his wife, the contesting party in this cause, his universal legatee and testamentary executrix.

The 18th June 1876, Antoine Prud'homme died, and the 7th August following his last will was registered with a declaration of his death, according to law.