

wishes to exercise what the Court characterized as extraordinary and unjustifiable powers over the property of citizens, to frame the law in still more cogent terms.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, May 15, 1879.

PRESENT:—Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, J. J.

CITY OF MONTREAL (defendants in Court below), APPELLANTS; and GREENE et vir (plaintiffs below), Respondents.

Assessments — Montreal City Charter — Married Woman separated as to property has the legal possession of her separate estate, though in her husband's domicile.

The appeal was from a judgment rendered by the Superior Court, JOHNSON, J., 30th April, 1877 (see 22 L. C. Jurist, 128). Dr. Utley, the husband of the female respondent, being indebted to the City of Montreal for assessments on an office which he had previously occupied, the City proceeded to levy the same under 37 Vict. c. 51, s. 88, which reads as follows:—

“ Si un contribuable néglige de payer le montant de ses taxes ou de ses cotisations dans les quinze jours qui suivront la signification faite comme susdit, le trésorier de la Cité pourra prélever le dit montant avec dépens et intérêt, (s'il en est dû) au moyen d'un bref, qui sera émané par la Cour du Recorder, autorisant la saisie et vente des biens et effets mobiliers de la personne endettée comme susdit, ou de tous biens et effets mobiliers en sa possession, en quelque endroit qu'ils puissent se trouver dans les limites de la dite Cité; et nulle réclamation d'un droit de propriété ou de privilège sur les dits effets mobiliers, n'aura l'effet d'en empêcher la vente pour le paiement des taxes ou cotisations, droits et dépens, sur le produit de la vente.”

A seizure was made of certain effects found in the conjugal domicile, but these effects were proved to be the property of Mrs. Utley, the female respondent, who was *séparée de biens*. The latter applied for an injunction to restrain the city from proceeding with the seizure, and this was maintained by the Court below, the judgment being as follows:—

“ The Court having heard the petitioner Mary Judson Green, and the defendant the City of Montreal, by their respective counsel, upon the merits of the *Requête libellée* in this cause, the other defendants not having pleaded to said Requête, having examined the proceedings, proof of record and admission, and duly deliberated;

“ Considering that, by law, the City of Montreal, the only defendant who has pleaded, was entitled to levy the amount mentioned in the warrant of distress issued out of the Recorder's Court, and in the said *Requête libellée* specified, but only out of the goods, chattels and effects belonging to their debtor, or in his possession;

“ Considering that the separate right of property in the effects seized under the said warrant was in the plaintiff, and should be preserved to her unless the said effects were then out of her possession, and in the possession of Utley the debtor aforesaid;

“ Considering that such is the general rule laid down by the statute 37 Vict. cap. 51 of the Province of Quebec, but that in the case of married persons, a woman separated as to property does not cease to have the title as well as the legal possession of her separate estate merely because her husband lives in the same house with her, and has to a certain extent, the use and enjoyment of her separate property;

“ Considering, therefore, that at the time of the seizure of the said effects, the same were not in the possession of the debtor aforesaid, so as to deprive the petitioner of her separate right of property therein, or to expose her to have them sold for the payment of her husband's individual debts, this Court doth order and enjoin the said defendants to desist from said seizure and from any further proceedings thereon, and doth order them to abstain from seizing any of the Petitioner's furniture, or property, for any similar debt of her husband; the whole with costs against The City of Montreal, *distrains* to Messieurs Doutre, Doutre, Robidoux, Hutchinson & Walker, attorneys for Petitioner; no costs against the other Defendants.”

The city having appealed,

RAMSAY, J., said the appeal was from a judgment, on an injunction taken by the wife *séparée* of Dr. Utley, which declared the injunction