

"Considérant que pour obtenir le dit bref, le poursuivant doit produire un affidavit constant que le défendeur recèle ses biens ;

"Considérant que le mot *biens* est générique et comprend les immeubles aussi bien que les meubles, et que dans les statuts refondus du B.C., ch. 83, s. 46, on se servait du mot *estate*, lequel est aussi compréhensif et général que le mot *biens*, et que l'on s'était servi des mêmes mots *biens* et *estate* dans le statut 27 G. III., c. 4, s. 6 ;

"Considérant qu'aux termes de l'art. 841 du C.P.C., il est procédé à la saisie des biens du défendeur de la même manière que sur exécution d'un jugement ;

"Considérant que, pour obtenir un bref de saisie avant jugement, le déposant doit jurer que le défendeur dissipe et recèle ses *biens* en général, et qu'il ne suffirait pas de jurer qu'il recèle ses biens meubles et effets ;

"Considérant qu'il est nécessaire, pour obtenir un bref de saisie-arrêt avant jugement, que le débiteur recèle ses *biens*, même immeubles, il suit comme conséquence logique et inévitable, que le demandeur doit avoir le droit de faire arrêter les biens mêmes que le débiteur recèle ;

"Déclare valable la saisie faite en cette cause, et rejette la dite requête de la défenderesse avec dépens distracts, etc."

A. Dalbec, for plaintiffs.

Loranger, Loranger & Beaudin, for defendant, petitioner.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, Nov. 22, 1880.

TORRANCE, J.

MOLSON et al. v. THE CITY OF MONTREAL.

Injunction—Suspension of execution of judgment.

This case was before the Court on an application of the plaintiffs for an order against defendants, enjoining them not to execute a judgment obtained by them in the Recorder's Court on the 11th September last against plaintiffs, whereby plaintiffs were condemned to pay certain sums of money assessed against their property and them for the costs of construction of a certain drain. The plaintiffs had instituted the present action to have the judgment

set aside, as well as the resolution and assessment roll upon which the judgment was based. A petition was presented to Mr. Justice Rainville sitting in Chambers on the 14th October, alleging that the defendants had issued warrants of distress to enforce said judgment, and praying that they be enjoined not to execute said warrants until the present action had been determined. Mr. Justice Rainville had ordered all proceedings to be suspended under the warrants until the petition was decided.

TORRANCE, J. The validity of the assessment and the judgment of the Recorder are in question in the present cause, and it appears to me only reasonable that, pending the present suit to try the validity of the assessment and the judgment, the defendants should be enjoined not to execute the judgment complained of. The defendants, resisting the petition, contend that the validity of the judgment of the 11th September can only be tried by the writ of *certiorari*, but I am not prepared to assent to this. The points in the case are easily discussed, and I think therefore that the petition of the plaintiffs should be granted. I have conferred with more than one of my brother judges, and they agree. Costs reserved.

Petition granted.

Beauchamp for plaintiffs.

R. Roy, Q.C., for defendants.

COURT OF REVIEW.

MONTREAL, Dec. 29, 1879.

JOHNSON, TORRANCE, RAINVILLE, JJ.

THE TRUST & LOAN CO. v. GUERTIN.

[From S. C., Iberville.

Delegation—Acceptance.

The acceptance by the hypothecary creditor of a delegation of payment, contained in the deed of sale of the hypothecated immovable, is a matter of consent merely between the creditor and the purchaser, and may be proved by showing that both purchaser and creditor acknowledged and accepted the relation of debtor and creditor.

The inscription in review was from a judgment of the Superior Court, district of Iberville, Chagnon, J., May 20, 1879.

JOHNSON, J. One Pinsonault was the debtor of the plaintiff under two deeds of obligation,