

seizure all the clothes except the *habit dont le saisi est vêtu et couvert* (as does the law of France.) Our law does not declare to be free from seizure the apparel and clothing of the *saisi*, largely; it allows that some may be seized; it has in view that the *saisi* may have clothing, or *vêtemens*, seizable; these are the *vêtemens* not necessary, or not ordinary; it frees from seizure only a certain quality of clothing, to wit, the ordinary and necessary; the other must go to satisfy the *saisi's* creditors, who, after all, have rights.

In the present case an expensive ball dress belonging to the debtor has been seized in the possession of a dressmaker; question is as to whether such an article is free from liability to pay the claims of creditors. Unless when seized it be necessary and ordinary wearing apparel of the debtor it is not, and *vice versa*. The word necessary is commonly defined to mean "needful," "indispensably requisite," and the word ordinary to mean "plain" not handsome, "customary," "of common kind or rank." Is a ball dress both necessary and ordinary? Is it necessary, for unmarried women, for all married women, rich or poor? It can only be used at balls. We do not ordinarily see persons, married or unmarried, walking about wearing ball dress, or appalled so. A ball dress (says the creditor here) is an article of luxury and extravagance, not ordinary, not an article of common kind, nor indispensably requisite; if suitable to rich persons it is not to poor ones who can't pay their debts, &c. The ball dress seized in this case is of about \$80 value. That is a large sum. The debtor says that the dress was no more than necessary and suitable to a person in defendant's class in society.

I see from this case that the courts may hereafter have to decide with great nicety of what character is clothing seized; ordinary or not? necessary or not? All clothing being, certainly, not free, is a ball dress lying at a dressmaker's free? Would two go free and would a fancy ball dress go free? Would they, if sworn to be "no more than necessary and suitable to the defendant," though not at all rich, but in debt?

We see in other countries what difficulties are in the way of determining what is necessary clothing. Judges and juries are bothered with such questions, which are best and most promptly settled by juries, supreme judges of matters of fact. Smith on Contracts and the cases on

this subject, referred to therein, are bewildering. Passing as a jury might upon the question, I find, for the plaintiffs, that the ball dress here, when seized, was not necessary for defendant and was not ordinary wearing apparel to be freed from seizure; so the *saisie arrêt* is maintained, and the defendant's pleas overruled, with costs against defendant.

Monk & Butler for plaintiffs.

Lareau & Lebeuf for defendant.

SUPERIOR COURT.

MONTREAL, May 28, 1881.

Before MACKAY, J.

GREENE et al. v. WILKINS, and LEWIS et al.,
intervening.

Business carried on in name of agent—Private agreement.

A business was carried on by a firm in the name of an agent, with whom they had a private agreement. Held, that the principals might intervene and claim goods seized by a creditor of their agent for a debt antecedent to the agreement, where it appeared that the seizing creditor had not been injured in any way by the secret arrangement.

PER CURIAM. Greene et al. have attached a quantity of goods in the Custom House, towards satisfaction of a judgment claim against Wilkins of over \$500. Wilkins has been carrying on business here as J. H. Wilkins & Co.

The intervening parties claim all that has been seized as their property, and say that any possession of them that Wilkins, nominally, had was that of a mere agent of them, Lewis & Co.

For title they show a private writing, a *sous seing privé*, of June, 1880, whereby it was agreed that W. F. Lewis & Co., should establish a store under the name of J. H. Wilkins & Co., to be managed by Wilkins as their agent; that Lewis & Co. were to supply him with all goods required, and charge the store with all goods imported and with a commission of five per cent. for buying; that defendant was to carry on as J. H. Wilkins & Co., for the benefit of Lewis & Co., and that defendant was not to make purchases. Lewis & Co. say that they did establish the store, put defendant into it as their agent, supplied all that was used or imported,