

is claimed. The words are : " Upon every judgment or order rendered by a Judge in summary matters, under the provisions contained in the third part of this Code." Now, the third part of the Code consists of five titles, in none of which is the present case comprised. Apart from this, the order complained of, from its nature, does not seem to be susceptible of revision. It is an order for the dismissal of a bailiff—a domestic order on which there should not be any review. Motion to reject inscription granted.

*Longpré & David* for petitioners.

*E. U. Piché* for respondent.

#### COURT OF REVIEW.

MONTREAL, December 29, 1879.

TORRANCE, RAINVILLE, PAPINEAU, JJ.

CORSE et vir v. HUDSON et vir, and GORDON, mis en cause.

[From S. C., Montreal.

*Lessor and Lessee—Exemption from seizure—Pleading the right of another.*

The judgment brought under Review was rendered by the Superior Court, Montréal, 30th June, 1879. See 2 Legal News, p. 260.

TORRANCE, J. The plaintiff had seized by *saisie-gagerie par droit de suite* a piano as liable for rent. The defendant pleaded an agreement by which the piano was exempt from seizure. The pretension of the defendant was maintained by the Court. Hence the appeal. The defendant held the premises of the plaintiff for the period during which the present debt arose, under a lease, containing the usual clause, that the premises should be furnished sufficiently to answer for the rent. Under a previous lease the defendant signed an agreement with G. Warner & Son acknowledging to have received a pianoforte on hire from them, of date 7th December, 1874, and plaintiff was party to this agreement, by which she agreed not to hold the piano for house rent or any other claim she might have against Mrs. Hudson. The Court below held that this agreement inured to the benefit of the tenant, without the intervention of Warner & Son, or Joseph Gould who represents them. The Court here is of opinion that the agreement in question, by which the right of pledge was waived, was solely for the benefit of the owner of the piano ; and for Mrs. Hudson

to invoke it while she is debtor of the plaintiff is to plead the rights of another, *exciper du droit d'autrui*, and her plea should not be entertained. The judgment will, therefore, be reformed so as to maintain the seizure of the piano which had been liberated.

The judgment is as follows :—

" The Court, etc. . . .

" Considering that the agreement of date 7th December, 1874, between defendant and G. W. Warner & Son, and to which plaintiff was a party, was solely for the benefit of G. W. Warner & Son and their assigns, and the seizure of the piano should therefore be maintained ;

" Considering that there is error in that part of the judgment of the Superior Court in this cause, of date the 30th of June, 1879, which discharged the seizure of the said piano, doth in this respect reform the said judgment, and doth declare the seizure of the said piano made under the writ of *saisie-gagerie* in this cause issued, to be good and valid, and doth order the said piano to be sold in due course of law, and the net proceeds of the sale applied to the payment and satisfaction of the amount of the said judgment, to wit, the sum of \$300, and interest and costs in both Courts, distracts, etc."

Judgment reformed.

*Dunlop & Co.* for plaintiffs.

*F. O. Wood* for defendants.

#### SUPERIOR COURT.

MONTREAL, January 31, 1880.

CHAUVEAU v. EVANS.

*Sale of Insolvent Estate—Percentage to Building and Jury Fund.*

JOHNSON, J. The Sheriff brings this action against an official assignee to get one per cent upon \$20,000, for which the real estate of an insolvent was sold for the benefit of his creditors. The amount sued for is alleged to be due under Sec. 145 of the Insolvent Act, and under the previous statutes creating a building and jury fund, and giving the Sheriff a right of action in such cases. The defendant pleads the general issue, and also another plea setting up that time was given to the purchaser to pay, with the consent of the creditors, and that the assignee has not received the proceeds of the sale, which was a sale *en bloc* of the moveable and immoveable property, and such a sale is not