

said judgments: *Kerby & Ross et al.*, 18 L. C. Jurist, 148.

*R. Laflamme, Q.C.*, e *contrà*, said he had to inscribe within eight days, and his client was heir for one-half.

The COURT was of opinion that the inscription should be struck.

Motion granted.

*Laflamme, Huntington, Laflamme & Richard* for plaintiff.

*Kerr, Carter & Goldstein* for defendants.

### COUR DE CIRCUIT.

Montréal, 16 octobre 1884.

Coram JOHNSON, J.

GOLDIE et al. v. BISAILLON.

*Saisie-revendication—Vente de la chose d'autrui—Vente à terme avec rétention du droit de propriété—Bail.*

JUGÉ:—*Qu'une personne qui vend un meuble et retient son droit de propriété jusqu'au parfait paiement des billets promissaires représentant le prix de la vente, ne peut saisir revendiquer ce meuble entre les mains d'un tiers de bonne foi, lorsqu'il a été vendu à ce dernier par l'acheteur avant l'échéance des billets.*

*Il en serait autrement, et le propriétaire pourrait saisir revendiquer son meuble, si ce dernier eut été perdu ou volé, par exemple, si le propriétaire l'eût loué avec stipulation que le locataire deviendrait propriétaire en remplissant les conditions du bail, et que le locataire l'eût vendu.*

PER CURIAM. The plaintiff sold a safe to one Leveillé, taking promissory notes in payment which are not yet due; and stipulating with the purchaser that the right of property in the thing sold was to remain with the vendor until the notes were paid. The safe was delivered to Leveillé and before the maturity of the first note he sold to the defendant in whose hands the plaintiff now revendicates this safe and calls the first purchaser, Leveillé, into the case. The defendant pleads, 1st, that the action is premature, Leveillé not being divested of his right of property until the first note was due and unpaid. 2nd, that Leveillé was in possession and had a right to sell to him, and that he was in good faith when he bought, and being

neither leased, nor lost, nor stolen, he had a right to buy in ignorance, as he was, of the stipulations between plaintiff and Leveillé.

Leveillé, *mis en cause*, pleads very much the same thing, and adds that the plaintiff could have no right to proceed even against him without offering back the notes, which he does not do; and having suspended the exercise of his right, whatever it was, during the pendency of the notes, he, Leveillé, is not *déchu de ses droits*. The defendant relies on art. 1488 and 1489; and the court is with him. I think that a sale of the property of another is valid, it is an ordinary commercial transaction, and where there is good faith in the purchaser, and where the thing has not been lost or stolen.

The case of *Bertrand v. Gaudreau*, 12 Rev. Lég., p. 154, was cited by plaintiff. It was different from this. The judge there evidently decided that Malouin could not sell the horse because it did not belong to him. There had been a lease of which the conditions when fulfilled were to constitute the lessee owner: The learned judge on that particular point, however, (although every other incidental question was most carefully examined, and supported by numerous authorities) only cited the article 1487, and said 'Malouin a vendu ce cheval qui ne lui appartenait pas, conséquemment il a vendu la chose d'autrui, et par l'art. 1487 la vente de la chose qui n'appartient pas au vendeur est nulle. The article cited says *not* that the sale of the property of another is null in all cases, but expressly excepts the cases mentioned in the three succeeding articles, which are, 1st, art. 1488: "La vente est valide s'il s'agit d'une affaire commerciale, ou si le vendeur devient ensuite propriétaire de la chose." Art. 1489: "Si une chose perdue ou volée est achetée de bonne foi dans une foire, marché, ou à une vente publique, ou d'un commerçant trafiquant en semblables matières, le propriétaire ne peut la revendiquer sans rembourser à l'acheteur le prix qu'il en a payé." There is a case not cited at the bar which leaves me in no doubt about the decision I ought to give in this. It is the case of *Brown v. Lemieux* in appeal (Rev. Lég., vol. 3, p. 361); the decision there is stated in the *breviate* thus: "Que le vendeur non payé, qui n'a pas vendu