

the opposant had an interest in having the property specified in order to have recourse against his co-defendants.

The plaintiff filed a declaration that he did not contest.

The opposant inscribed *ex parte*, and proceeded to examine witnesses under objection of plaintiff. The only witness apart from the bailiff was the opposant's brother, who admitted that he was present to attend to an opposition he had in Court; was told that he would be taxed in this case and the opposant in his, and supposed he was examined so as to be taxed.

When the case was submitted by the opposant, it was admitted by the plaintiff that the opposition must be maintained with costs against him, if he was responsible for the bailiff's irregularities, but he contended that, as he did not contest, the opposant had a right to be relieved from the seizure without subjecting the losing party to costs of *enquête*; that an opposition *afin d'annuler* based upon irregularities and illegalities required no oral proof, and the plaintiff should not be mulcted in costs of a useless *enquête*.

The opposant urged that he had a right to prove that the portion of the mass of property seized belonged to him.

In reply, the plaintiff argued that the pretension of the opposition was as to the irregularity in not specifying the particular owner of property seized, etc., and no proof was necessary to show the irregularity which was not contested. 586 C. C. P. was cited. The 84th Rule of Practice is very clear as to opposition being maintained without proof, where plaintiff declares he does not contest.

The judgment was as follows:—

"Considering that the declaration filed by plaintiff, that he did not contest the said opposition *afin d'annuler*, was and is an admission on his part that opposant had a right to be relieved from the seizure, etc., by reason of the irregularities and defaults therein complained of on the part of the bailiff charged with the writ of execution;

"Considering that, notwithstanding said declaration, opposant had a right to make proof *ex parte* in manner and form as he hath done;

"Considering that plaintiff, under the circumstances of this case and the proof made,

should be held responsible for said irregularities and defaults of said bailiff, etc., doth set aside and annul the seizure, etc., and maintain said opposition with costs against plaintiff."

Noyes & Bernard for plaintiff.

Baker & Martin for opposant.

(J. P. N.)

SUPERIOR COURT.

AYLMER, (Dist. of Ottawa,) April 20, 1867.

Before WÜRTELE, J.

KENT et al. v. ROSS et al.

Insolvency—Revendication by curator of goods removed from his custody.

HELD:—That the curator to the property abandoned by an insolvent trader has the right to revendicate goods removed without his consent from his custody, without previously taking the advice of the creditors and being judicially authorized, but at his own risk and cost.

PER CURIAM:—The plaintiffs were appointed joint-curator to the property abandoned by one Isaïe Hortie, an insolvent trader.

They allege in their declaration that they were placed in possession by the provisional guardian of the property so abandoned, and that the defendants wrongfully removed and took away from their possession and custody, certain goods and effects forming part of the insolvent's stock in trade; and they seek to revendicate the same.

The defendants demur to the declaration and ask for the dismissal of the action, because it was instituted without the advice of the creditors or inspectors having been taken and without any permission of the court or judge in accordance with article 772 of the Code of Civil Procedure.

This article requires the previous permission of the court or judge when the curator wants to exercise a right of action of the debtor or a right of action possessed by the mass of his creditors; and the reason of this is that he should not be allowed to institute proceedings which may involve the estate in expense without due consideration on the part of those interested and judicial authorization.