

“ Renvoie l'exception et la défense des défendeurs ; déclare que les dits défendeurs se sont sans droit emparés de l'invention et propriété du demandeur, et l'ont frauduleusement copié et contrefaite ; leur fait défense sous les peines de droit, de se servir de la machine par eux construite pour la fabrication des cierges comme susdit, et les condamne à payer au demandeur à titre de dommages résultant de l'usurpation de son droit pour la période sus-indiquée, la somme de \$600 courant, avec intérêt et dépens, distraits, etc.

“ Et la cour réserve au demandeur le droit de se pourvoir par *scire facias* pour demander l'annulation du brevet octroyé aux défendeurs, le 20 février 1879, tel que susdit.”

Robidoux for the plaintiff.

Lacoste, Globensky & Bisailon for the defendants.

SUPERIOR COURT.

MONTREAL, December 11, 1882.

Before TORRANCE, J.

WALKER v. BLACK et al.

Simulated deed.

Simulation is a disguising of the truth ; a deed is simulated which does not contain a sincere expression of the real intention of the parties. So, where a property worth about \$1,200 was sold to a man of straw (who did not take possession) for a consideration stated in the deed to be \$3,650, and two of the instalments amounting to \$2,000 were afterwards transferred by the vendor to a creditor in payment of goods, the Court declared the deed to be a simulated one, and set it aside so far as concerned the creditor.

This was an action to set aside an obligation by one Theodore Roy in favour of the defendants, John Black and Henderson Black, as being simulated and fraudulent, so far as concerned the plaintiff.

PER CURIAM. The evidence shows that the defendants, Black, made an agreement with Walker for the sale to them in the month of May, 1879, of goods of the value of \$2,000. Walker agreed to accept in payment a transfer of \$2,000, being the two first instalments of an obligation and hypothèque due to the purchasers, Black, by one Theodore Roy. The obligation bore date the 15th April, 1879, and

the transfer to Walker bore date 5th May, 1879, was registered on the 23rd July, 1879, and was accepted by Roy on the 7th May, 1879. The pretention of Walker is that Theodore Roy was the prête-nom of the Blacks, and had no interest in the matter ; that the Blacks were the real proprietors of the land on which the obligation was secured. We have the uncontradicted evidence of Theodore Roy himself, and of his son Charles H. Roy, that Theodore Roy only accepted the transfer after repeated solicitations on the part of the Blacks, and with the assurance from them that he would not be troubled in the matter. Theodore Roy was then notoriously insolvent at the domicile of the Blacks, destitute of any means, and a mere man of straw. More than this, even after the sale to Roy in April, the Blacks continued to deal with the property as their own, naming an agent to manage it. The agent was Alfred Roy, who says he was appointed by the Blacks in May, and subsequently when the plaintiff asked him for the interest due by Roy, he did not know that Roy was owner. When the sale was made to Roy in April, the consideration stated was \$3,300 to the Blacks, besides \$350 to the Logan estate. The Blacks acknowledged receiving \$300 from Roy, but they received nothing, and on the transfer to Walker they paid \$5 to the Insurance Company on the transfer of the policy of insurance.

It is important here to trace the valuations of the property. The land was sold by Sir Wm. Logan in 1871 to Deslongchamp for \$350. Deslongchamp having put up a house, sold to Maurice Proulx for \$3,000. The Blacks acquired from Proulx in 1878, and Maurice Proulx says that though the price in the deed was \$3,000, the real consideration was only some \$1,200, or \$1,300. His nephew, Celestin Proulx, says the same. It is stated by Maurice Proulx that the Blacks required a fictitious price to be inserted in the deed. It is a common device with speculators in land, as giving them a chance of selling at a higher price. We have seen that the nominal consideration stated to have been paid by Roy was \$3,650. Let us see what the witnesses say as to the value at that time. Alfred Roy says that the saleable price at that date was \$1,000 to \$1,300. Joseph Simard says the value was \$1,250. Both of these are valutors of weight, and were pro-