

COURT OF QUEEN'S BENCH.

MONTREAL, November 22, 1881.

DORION, C. J., RAMSAY, TESSIER, CROSS & BABY, JJ.
SENECAL (opposant below), appellant, and CRAW-
FORD (plif. below), Respondent.

Moveables sold at judicial sale—Déplacement.

Where moveables have been sold at judicial sale, and the purchaser in good faith has allowed the effects to remain in the defendant's possession, he, or his representatives, may oppose the seizure and sale of such effects at the suit of another creditor.

The verbal testimony of the purchaser is admissible, as against such other seizing creditor, to prove the transfer of the effects from the first purchaser to the transferee, opposant.

The appeal was from a judgment of the Superior Court, Montreal, March 12, 1880, dismissing an opposition to the sale of moveables under execution.

RAMSAY, J. This is an appeal from a judgment of the Superior Court dismissing an opposition to the sale of certain moveables seized in the possession of L. A. Senecal. The opposant is the mother of L. A. Senecal, and he is the *cessionnaire* of Mr. Gill who is the son-in-law of L. A. Senecal. The judgment is founded on the presumption that Gill never purchased the things for himself, and that the opposant is a mere *prête-nom*. Fraud is not pleaded, and the only evidence establishes clearly that Mr. Gill bought the things and paid for them. We cannot therefore adopt the view of the Court below. It is highly probable that Mr. Gill purchased these effects with the intention of allowing his father-in-law to use them; but that is not illegal. We have nothing to do with his motive. On this point we are all agreed, I believe. But there was another question urged at the argument with some success. It is said on the part of respondent that there is no legal evidence of the cession from Gill to opposant, that there was a bill of sale *sous seing privé* and it was not produced, that respondent was in the rights of his debtor, and that he has possession. It seems to me that this argument shows at every step the untenable character of respondent's position. It is precisely because his only title to claim the effects is that they are seized in his debtor's possession that verbal testimony is admissible.

Under no system of evidence was it ever required to repel *simple* possession by written evidence. The legal title was properly proved to be in Gill, and respondent answers this by saying, I possess. Surely Gill can say, you possess by sufferance, and prove it by parol. If not, he could only obtain his property after the sale by writ of possession, and if Gill can establish his right by parol, why not his *cessionnaire*? The proof of the cession by parol, might be raised by Gill, as against opposant, but as a witness Gill proves it. The majority of the Court is therefore of opinion that this judgment must be reversed.

The judgment in appeal is as follows :

" La Cour, etc. . .

" Considérant qu'il est prouvé que les meubles qui ont été réclamés par l'appellant dans son opposition afin de distraire, à l'exception de deux boîtes, dont une contenant environ 25 cigares, une corbeille à papier en fil de fer, un pot à tabac en grès, un petit calendrier en cuivre, une pendule et ses mouvements en bon ordre, un chiffonier en frêne, à deux portes et à un tiroir, un cadran et ses mouvements, une paire de rideaux en nett, un miroir de toilette au troisième étage; parmi les quinze volumes Canada under the administration of Lord Dufferin, by Stewart, un petit moulin à coudre à manivelle en bon ordre, une petite boîte en noyer noir avec No. 174, deux encriers, ont été achetés par Charles Gill sur vente par autorité de justice, et que le dit Charles Gill est par là devenu propriétaire des dits meubles, sans qu'il fut nécessaire de les déplacer;

" Et considérant qu'il est prouvé que le dit Charles Gill a cédé ces meubles à l'opposant en cette cause pour valeur reçue, et, que sous ces circonstances, l'opposant est, en droit, bien fondé de les réclamer comme en étant le propriétaire;

" Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure siégeant à Montréal le 12e jour de mars 1880;

" Cette cour casse et annule le dit jugement du 12e jour de mars 1880;

" Et rendant le jugement que la dite Cour de première instance eût dû rendre, déclare l'opposition du dit appellant bien fondée, et le dit appellant légitime propriétaire des biens et effets mobiliers mentionnés au procès-verbal de saisie produit, à l'exception de ceux ci-dessus spécialement désignés; en conséquence maintient la dite opposition de l'appellant, déclare illégale, nulle et de nul effet la dite saisie des dits biens et effets mobiliers, et en accorde main-levée au dit appellant avec dépeus, tant en Cour de première instance qu'en appel. (Dissident l'hon. M. le juge Cross.)"

Judgment reversed.

Lacoste, Globensky et Bisailon, for appellants.
T. Bertrand for respondent.