

by the Court on the 16th June, 1880. The sale was again fixed for the 26th June, and the sale did not take place, because the defendant, as alleged by the plaintiffs, had secreted and made away with the goods seized, and this was the question to be determined.

TORRANCE, J. The bailiff, Gustave Darveau, says that the defendant promised to have the goods for the sale on the 26th June, and then told him to take a rule and give him time, and he would pay in September. Roy was a bailiff and not a trader capable of assigning as he had done to the assignee Girouard, and the assignment had been held to be inoperative, as also the sale by the assignee to Dauphinais. Dauphinais is the father-in-law of Roy, and they live in the same house. The father-in-law and the wife of Roy contribute to the expense of the household, sharing the burden of the rent in common, and part of the money comes from the defendant.

The demand of the plaintiffs is answered by Roy setting up the assignment to Girouard, and the sale by him to his father-in-law Dauphinais.

We can judge of the value of these transfers, the latter of which, namely the sale to Dauphinais, was made by the assignee on the 19th May, four days after the judgment of the Court, which on the 15th May rejected the claim of the assignee. Do the circumstances justify the demand for imprisonment? C. C. P. 782 says that in all cases in which the defendant conveys away or secretes his effects, he may be imprisoned until he satisfies the judgment. We see him here party to the sham transfers to the assignee and Dauphinais his father-in-law. The goods remain really under his control, for he had promised to produce them for the sale, and then to pay the debt, only asking time till September. He occupies the same house with the purchaser, his father-in-law, whose claim had been rejected by the Court. I see here the conveying away and secreting which are contemplated by the law, and I have no hesitation in overruling defendant's answer to the rule, and in ordering the imprisonment asked for, *nisi causa* on the first September next.

*Longpré* for plaintiffs.

*J. E. Robidoux* for defendant.

## SUPERIOR COURT.

MONTREAL, September 17, 1880.

TORRANCE, J.

DUCHESNAY V. LAROCQUE.

*Procedure—Preliminary plea—C. C. P. 131, 132.*

*Where the defendant after filing a declinatory exception, is required under (C. C. P. 131) to plead to the merits, and then pleads a demurrer, the Court may order that the declinatory exception be disposed of, before proceeding on the demurrer.*

This case was in a peculiar position. It was on the roll for hearing on law on the inscription of plaintiff. The defendant had met the demand by a declinatory exception. The plaintiff, as was his right, asked for a plea to the merits, and the defendant filed a *défense en droit* to the action, and other pleas.

*Alderic Ouimet*, for defendant, submitted that the law hearing should not take place until it had been decided whether the Court had jurisdiction.

*Laviolette*, for plaintiff, cited C. C. P. 131, 132, which provided that the proof should take place at the same time on all the issues, and he could not inscribe for proof until he had disposed of the law issue.

TORRANCE, J. This is a case in which the intervention of the Court is necessary. What Mr. Laviolette says is very reasonable, and on the other hand it would be an anomaly to require the defendant to try the merits of the action on a demurrer when he has already excepted to the jurisdiction.

The Court orders that the law hearing be suspended until the disposal of the declinatory exception.

*Laviolette* for plaintiff.

*Alderic Ouimet* for defendant.

GUILLAUME V. CITY OF MONTREAL.

*Action in forma pauperis—Revocation of privilege—C. C. P. 32.*

*A defendant who seeks to have the plaintiff's leave to plead in forma pauperis revoked, is not entitled to ask for the dismissal of the action.*

The defendant moved that the permission given to plaintiff to prosecute *in forma pauperis* be rescinded and the action dismissed.

TORRANCE, J. The leave given by the court