John Molson. That by the will of John Molson the executors, or the survivors of them, had power to sell all the real estate in order to make a division of the property, and that the proceeds of the sale should take the place of the original property; that they exercised this power, and executed deeds of sale to the various members of the family, and that the proceeds of these sales from that moment became the property substituted and declared *insaisissable*.

Respondent also contends that he lent to Molson his money, sought to be recovered by this execution, on the faith of a deed of sale duly enregistered, showing an unincumbered title in Molson; that, if Molson's title was bad, it was so to the knowledge of Molson, and that by showing him a clear deed he had obtained respondent's money by fraud; and that as no one can profit by, or plead his own fraud, the defence in the mouth of Molson is inadmissible. He contends also, that there is evidence that Molson had been advised by counsel before the money was paid to him by respondent, that his title was defective.

Appellant makes answer to this: that the sale was merely a *partage* clothed with the form of a deed of sale, that the real character of the transaction was apparent on the face of the deed, which refers to the will, and that as it required two executors to convey the title, and as Alex. Molson could not convey to himself, there remained only William Molson as vendor, and therefore respondent had full notice that the deed could not be the whole title, and that he had to look to the will. That, in fact, there was no misrepresentation; that respondent's lawyer, who treated in the matter of the loan, had been the appellant's lawyer in the matter of the *partage* under the will, and that he had been made aware at the time of the loan, of the opinion of counsel that the title was bad as a deed of sale, and was in effect only a *partage*.

It is maintained by the appellant that, even if there were fraud, there is a prescription of the law which exempts from seizure "sums of money or objects given or bequeathed upon the condition of their being exempt from seizure." (558 C. C. P.)

I do not think we are obliged in this case to enter into the first question, namely, whether the transactions by way of sale are only, in effect, a mode of making a *partage*, as between the heirs and their *ayants cause*. I may, however, observe *en passant*, that if the argument is sound, it seems hardly to go far enough, for if the executor, appellant, could not sell to himself he could not apportion to himself in any other way. The whole transaction, then, is null, if the sale be null as a sale. I may also express a doubt whether the sale by the executors to one of themselves is null *de plano*, and whether the executor who has made such sale can himself invoke its nullity. It may be questioned whether he has not had the full advantage of his father's bequest, and that the will is satisfied. If he has, his squandering his succession was evidently within his powers.

But, as I have said, I express no formal opinion on these questions, for I am strongly of the opinion that Molson obtained the money, if the deed be bad, by fraud, and that he cannot set this up. As for the provision of the C. C. P. referred to, it is only a general enumeration of things *insaisissables*, and in no wise is to be taken as a new enactment over-riding the common law. Now, I think the rule that no one can plead his own fraud is a fundamental principle of justice—one of those principles, which, whether expressed or not, must naturally be considered as untouched by particular rules. The texts of law which recognize this principle are numerous and well known—"no one can enrich himself at the expense of his neighbour," "no one can profit by his fraud," and so forth. Nor on general principle can fraud be covered by the protection given to special persons. Thus a woman is protected against her weakness, not against her fraud. And so we have the well-known rule, *mulieribus tunc succurrendum est, cum defendantur, non ut facilius calumnienter*. De Reg. jur., 110. And so the wife had not the benefit of the *Senatusconsultus Velleianum* when she took a part in the fraud. Several instances in illustration of this principle are given in the code. And to the rule I know no exception, save when the fraud is in violation of a law of public order. The law which permits a donor to attach the condition he chooses, which is not against good morals, and hence to declare that the thing given is for aliments, and is *insaisissable*, does not fall into this category. And this suggests another idea, and it is, that if the restriction of the donor was to