

siderant que la*procuracion donnée par la dite Dame Erichsen et la renonciation faite en vertu d'icelle avaient pour but d'accomplir la condition sous laquelle la dite donation avait été faite, et pour s'en procurer tout l'avantage tel qu'exprimé dans la dite procuracion, et qu'il est évident que c'est par une simple omission que l'héritage sur lequel la dite Dame Erichsen réclame maintenant son douaire, n'a pas été désigné dans la dite procuracion et renonciation ;

" Et considérant qu'en outre la dite Dame Erichsen, en acceptant la dite donation, s'est obligée d'en accomplir les conditions, et qu'elle est tenue de réparer l'erreur qu'elle a commise dans la dite procuracion et la dite renonciation ;

" Considérant que les dispositions de l'art. 1029 du Code Civil, par lesquelles il est dit qu'on peut stipuler au profit d'un tiers lorsque telle est la condition d'un contrat que l'on fait pour soi-même, ou d'une donation que l'on fait à un autre, rendent inadmissible la prétention de la demande que la condition imposée à la dite Dame Erichsen de renoncer à son douaire ne pouvait pas profiter à la défenderesse ;

" Considérant que dans les circonstances la dite Dame Erichsen ne peut se prévaloir de son omission pour réclamer son douaire, et considérant qu'en supposant que la dite Dame Fraser ne serait pas liée par les actes de la dite Dame Erichsen sa mère, elle n'a aucun droit à la possession du douaire qu'elle réclame du vivant de sa mère la dite Dame Erichsen ;

" Considérant qu'il n'y a pas mal jugé dans le jugement rendu par la Cour Supérieure," &c.

Judgment confirmed.

Bethune & Bethune, for Appellant.

Barnard, Monk & Beauchamp, for Respondents.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ. McCaffrey (*mis en cause* below), Appellant, and CLAXTON et al. (plffs. below), Respondents.

Execution—Guardian—C.C.P. 591.

The guardian may be condemned to produce the property or pay the debt and costs ; but he cannot be condemned to pay more than is due by the defendant to the seizing creditor.

The appeal was from a judgment of the Superior Court, District of Bedford, DUNKIN, J.,

April 16, 1880, ordering the imprisonment of the appellant, a guardian, until he should have paid certain amounts.

Sir A. A. DORION, C.J. (*diss.*), though that the judgment was incorrect. As his honor read the rule, the demand was that the guardian produce the goods, and in default of producing them, that he do pay the value thereof. This was set down at the amount of the debt and costs, but the demand was to pay the value, and judgment went accordingly. What the creditor is entitled to demand is that the guardian produce the goods, and, in default of producing the goods, that he pay the debt. Then there is a proviso that upon establishing the value of the goods he may be discharged on paying the value. Here no proof was made of the value of the goods, and the judgment, without any proof of value, condemned the guardian to pay the amount of the debt as the value. His honor was of opinion to reverse the judgment, and to order proof of the value of the goods that were seized. The majority of the Court, however, thought the guardian might be condemned to pay the debt.

RAMSAY, J. The majority of the Court are agreed to reverse the judgment and to give the appellant the costs of the appeal. The difference between the opinion of the majority and that of the Chief Justice is on a matter of detail.

The appellant, a guardian, is imprisoned for failing to produce the effects committed to his keeping. He complains :

" That the judgment, ordering the said imprisonment, is illegal, null and void, in as much as it orders the imprisonment of the appellant, the guardian, until he has paid the full amount of the judgment, interest and costs, or produces the effects seized and placed under his guardianship, without giving any alternative to pay the value thereof. That the said judgment is, moreover, illegal and null, in as much as the appellant, the guardian, is condemned to pay the amount of costs incurred by a third party claiming the right of property in a portion of the goods seized, the judgment for which execution issued, and under which the goods were seized, condemning the defendants, in their respective capacities of executor and universal legatee, and the additional costs incurred, payable by John Mahedy personally."