a creditor to set aside as fraudulent a deed of sale of property made by his debtor, are not privileged as against a third party, owner of an undivided interest in the property, and who has neglected to file an opposition afin de distraire to the sale by the Sheriff, but who files an opposition afin de conserver on the proceeds of sale.

PER CURIAM:—The plaintiffs, on a judgment against W. W. Beckett and Henry Beckett, seized and sold by the Sheriff certain emplacements in Sherbrooke, and $825.17 was returned into court for distribution. Plaintiffs filed an opposition *à fin de conserver*, alleging, that on the 18th of November, 1884, the defendant W. W. Beckett and the contestant A. E. Beckett sold these lots to the defendant H. R. Beckett and Son, and on the 20th of the same month, H. R. Beckett and Son sold these same lots to Ernest R. Beckett. That plaintiffs caused the said deeds to be set aside as fraudulent with costs against H. R. Beckett, E. R. Beckett and H. R. Beckett and Son, taxed at $330.15. That these costs, being made in the interest of the mass of the creditors, they had a right to be paid by special privilege out of the proceeds of the sale of these lots.

Contestant filed an opposition *à fin de conserver*, alleging that he was the owner of ¼ (or rather ⅜ reduced to ¼)—That he should be paid ¼ of the proceeds by special privilege.

The Prothonotary drew up a report awarding the plaintiffs by special privilege out of the proceeds $330.15, and giving to the contestant ¼ of the balance after paying the costs of the suit and distribution.

The report was contested by A. E. Beckett as to items 5 & 6, (costs $330.15 and costs of opposition $16.50 = $346.65), alleging that as against him the acknowledged owner of ¼ of the property sold on W. W. Beckett, plaintiffs can have no privilege for the costs of their former action to set aside the deeds of sale, but in any event, if such costs are privileged, they could only be so as regards the proceeds of the ¾ of W. W. Beckett the debtor of plaintiffs, and not as against contestant as owner of ¼ of the lots sold. Plaintiffs say, you have benefited by our action, you had conveyed your rights by deed; we caused said deed to be set aside and it inured to your benefit, because, having made over your right, by the cancelled deed, to Beckett & Son, it reverted to you and the costs we made were for your benefit and you should pay your proportion, these costs were made for the creditors of W. W. Beckett's ¾ and your ¼. This is changing the issue.

Their opposition claimed these costs as having been made in the interest of the mass of the creditors. The collocation was on that assumption. But when contested, the plaintiffs by their answer to the contestation try to enlarge their claim by saying, "we are entitled to this, not only on the ground upon which we claimed it, and upon which it was allowed, but also on the additional ground alleged in the answer." This cannot be. The issue is as raised by the opposition, collocation and contestation of the report. Do these costs come under the provisions of the law?

The privilege was claimed and allowed under 2009, C. C. A great deal of discussion and diversity of judgments have existed as to what costs shall be privileged, see *Tansey & Bethune et al.*, 1st, Montreal Law Reports (Queen's Bench,) page 28. In this case it was held that costs of defence on which realty was sold were privileged—Ramsay, J., dissenting. Recently, a majority of the Court of Review at Quebec, have held a directly contrary doctrine, Quebec Law Reports, Vol. 13, page 302, *Langlois* v. *The Corporation of Montminy*. But that is not the question here. It is this:—Is a proprietor who has failed to oppose the sale obliged to pay, when costs have been made to bring the property to sale against a debtor, and such costs alleged to be in the interest of the mass of the creditors of such debtor, his proportion, or should such costs come out of the amount levied of the property of such debtor? The plaintiffs have succeeded in selling the ¾ of the realty belonging to their debtor, and ¼ belonging to contestant. Should contestant pay ¼ of these costs which were not made for him as he was not a creditor and not alleged to be such, and when these costs are claimed by plaintiffs and allowed to them as made in the interest of the mass of the creditors? It is said that Art. 2006 C. C., gives a privilege