

debentures, and thereby to hypothecate the real estate and appurtenances therein described, being the same which are seized in this cause;

"And considering that the said debentures on which the said judgment was rendered, were issued in conformity to the provisions of the said Act, and the form thereby given mortgaging and hypothecating the said real estate and appurtenances;

"And considering that by virtue of Art. 2016 of the C. C. of L. C. and by law, the appellants, as holders of the said debentures, and by virtue of their said judgment, had a right to cause the said property, real estate and appurtenances so hypothecated to be sold in the hands of whomsoever they might be;

"And considering that by the Statute 36 Vict. cap. 51, being an Act to amend the Acts respecting the Richelieu, Drummond & Arthabaska Counties Railway Company, to confirm certain agreements between the said Company and the South Eastern Counties Junction Railway Company, and for other purposes, it is provided that all the rights and remedy of all municipalities and creditors of every class and degree of the said Richelieu, Drummond & Arthabaska Counties Railway Company should continue to exist unimpaired and be in no way lessened, and that all classes of bondholders, having mortgages on any real estate of the said Company, should continue to have unimpaired, and be maintained in their several rights and privileges as if the said Act had never been passed;

"And considering that the said appellants were entitled to cause the said property so hypothecated by the said debentures to be seized and sold for the payment of the amount of their said judgment;

"And considering that the seizure made of the said property was and is regular, and cannot be avoided for any of the reasons assigned in the opposition *afin d'annuler* of the said respondents;

"And considering that there is error in the judgment rendered by the Superior Court, at Montreal, on the 21st day of February, 1878, setting aside the said seizure;

"This Court doth cancel and annul the said judgment of the 21st day of February, 1878; and proceeding to render the judgment which the said Superior Court should have rendered,

doth dismiss the said opposition *afin d'annuler* of the respondents, and doth condemn the said respondents to pay to the said appellants the costs incurred as well in the Court below as on the present appeal. (The Hon. Mr. Justice Tessier dissenting.)"

*Trenholme & Maclaren*, for appellants.

*E. Carter, Q.C.*, for respondents.

MONTREAL, Dec. 22, 1879.

SIR A. A. DORION, C.J., MONK, RAMSAY, TESSIER, CROSS, JJ.

ADAM (plff. below), Appellant, and FLANDERS (deflt. below), Respondent.

*Registration—Judgment registered against real estate attaches, though the property had been previously sold to a third party, if the sale was not registered until after the registration of the judgment.*

The appeal was from a judgment of the Circuit Court, District of St. Francis, dismissing a hypothecary action. The judgment was in these terms:—"Defendant, being the owner in good faith of the property in question in this cause, under deed of sale, before the judgment under which plaintiff claims hypothec in this cause was rendered, whether actual delivery was made or not, this action is dismissed with costs."

The sale was registered within thirty days, but appellant submitted that the delay allowed by article 2083 C.C. is for the exclusive benefit of the vendor.

MONK, J. (*diss.*) found it impossible to concur in the judgment about to be rendered. He was of opinion that a judgment can be registered only against property in the possession of the judgment debtor, and that registration against a property which has been sold by the debtor previously is without effect. He considered that this was the correct interpretation of Art. 2026, "Legal hypothec affects such immovables only as *belong to the debtor*," &c. He was, therefore, of opinion that the judgment should be confirmed.

Sir A. A. DORION, C.J., said the majority of the Court was of opinion to reverse the judgment. Although the sale took place three weeks before the judgment was registered against the property, yet as regards third parties the registration alone conferred title, and not the sale; and the registration of the sale was posterior to the registration of the