

SUPERIOR COURT.

MONTREAL, May 14, 1881.

Before TORRANCE, J.

LALONDE dit LATREILLE v. PREVOST and divers creditors, and LALONDE et al., petitioners.

Resale for false bidding—Adjudicataire.

Where the adjudicataire has retained the purchase money, under C. C. P. 688, and has appealed from the judgment of distribution, and put in security, a resale for false bidding cannot be demanded pending the appeal.

This was a demand for resale for false bidding. The petitioners set forth a sale of the land in question on the 11th September, 1878, to Jean-Baptiste Jules Prevost for \$1,005, which sum he has not paid; that by a judgment of date 31st October, 1878, Prevost was allowed to retain in his hands the purchase money on giving security under C. C. P. 688, which was done; that on the 15th December, 1879, the judgment of distribution was homologated, and no opposition or appeal was made to or from the said judgment within fifteen days; that on the 27th July, 1880, the judgment of distribution was served upon Prevost, who had not yet deposited the moneys; that on the 20th February, 1881, he was ordered, on petition of Henri St. Pierre and the heirs de Beaujeu, to deposit the money collocated in their favour, but he had not yet deposited the money. That petitioners were all collocated by said judgment. Prayer accordingly.

This petition was presented on the 11th March, 1881, and the *adjudicataire* Prevost answered that the petition was ill-founded, because it was presented in the name of different persons collectively, who had different interests; because the heirs de Beaujeu and St. Pierre had been paid their collocation; because petitioner had appealed from the judgment collocating Latreille and Leroux, and given security for the appeal which was now pending before the Queen's Bench, and Latreille and Leroux were the only ones now interested.

It was admitted that the heirs De Beaujeu and St. Pierre had been paid the amounts of their collocation and were now without interest, and that there was an appeal pending before the Queen's Bench.

PER CURIAM. The judgment of distribution was rendered on the 15th December, 1879, and

the writ of appeal was dated the 5th January, 1880, and the security bond in appeal was dated the 8th January, 1880, a few days after the fifteen days subsequent to the judgment of the 15th December, 1879. As to the objection which is preliminary in its nature, that the interests of the petitioners are not identical, I see no difficulty on that score. Petitioners cite C. C. P. 691 and 760, and 36 Vic., cap. 14, sec. 5, sub-sec. 3 (Quebec). This statute meets the case of the money being in the hands of the officer of the Court, or of the Treasurer; but, in the present case, the purchaser gave first security for the payment of the purchase money, and next for the condemnation in appeal. The cases cited of *Metrisse v. Brault*, 2 L. C. J. 303; *Coutlée v. Rose*, 6 L. C. J. 186; *Brush v. Wilson*, 6 L. C. R. 39; *Hamilton v. Kelly*, 15 L. C. J. 168; and *Ex parte Burroughs*, 2 L. C. R. 9, do not appear to me to apply. I think that the appeal having been taken long before the petition, and security given, the resale *folle enchère* should not be proceeded with. The order is therefore refused.

Scanlan for petitioners.

J. O. Joseph for *adjudicataire*.

SUPERIOR COURT.

MONTREAL, May 14, 1881.

Before TORRANCE, J.

LEROUX v. DESLAURIERS, NORMAN, opposant and petitioner, and DUMOUCHEL, *mis en cause*.

Bailiff—Contempt of Court.

A bailiff who proceeds to sell the goods of defendant notwithstanding the fact that oppositions have been filed and that the prothonotary has made an order to suspend proceedings, is guilty of contempt of court.

This case was before the Court on the merits of a rule for *contrainte par corps* against Narcisse Dumouchel, a bailiff of the Court. It was charged against him that acting as a bailiff in charge of a writ of execution against the goods of the defendant, having received oppositions and an order from the prothonotary of the Court to suspend proceedings and make a return to the Court, he, Dumouchel, did with malice and premeditation, illegally and fraudulently, on the 20th November, 1880, sell a sleigh (*voiture*) of the value of \$40, belonging