

two who has been put in actual possession is preferred and remains owner of the thing although his title be posterior in date; provided, however, that his possession be in good faith.

The three articles last cited from the Code, have made a change in the law. Is the present case affected by that change?

Consent, without delivery, now passes title to moveables, even as regards third parties, with the qualification contained in art. 1027, that the posterior title with possession has priority over the earlier title. In the present case, the attachment under the Insolvent Act took the utensils in question in the hands and possession of the Insolvents McLeod, McNaughton & Léveillé, and transferred their title and possession to Dupuy the Assignee; the title was posterior in date to that of Cushing, but the possession with the title, vested the property in him, no previous delivery having taken place to Cushing. A leading maxim, always heretofore recognized in such cases, was that possession of moveables was a presumption of ownership. Bourjon and other authors treating of the subject say, that *en matière de meubles possession vaut titre de propriété*. This rule has not been reversed by the Code. It may be slightly modified, so as not to permit of a naked possession being allowed to prevail against a prior title in good faith. The possessor in such case may require to shew some title, although a posterior and, perhaps, sometimes even a weaker title may suffice.

Before the Civil Code came into force, it would not have been seriously contended that a title such as produced by the respondent, would have been maintained against an execution creditor of the vendors, or against an assignee to their insolvency. There is no sufficient reason why it should do so now.

Lastly—Was the respondent's title one in good faith? When the title is in good form, and unaccompanied by indications of fraud, publicity is the usual test of good faith in the purchaser, and the ordinary way in which it is proclaimed, is by open and public possession. There are indications in this

case, from which legal fraud might be inferred. The effects conveyed were the implements, without which the business of McLeod, McNaughton & Léveillé could not be carried on; the purchaser was not a trader or dealer in such articles, but on the contrary was a professional man, who as a mere money lender, would be unlikely without motive to lend himself to such a transaction, and accept what, to all appearance, was a very equivocal security, considering that the actual possession remained as before; publicity is also wanting. These are sufficient grounds from which to draw the inference of legal fraud. See Bourjon *édn.* of 1770, vol. 1, p. 145, tit. 1, *Des biens considérés en général*, Cap. 6, Sec. 1, No. 1. "*En matière de meubles la possession vaut titre de propriété, la sûreté du commerce l'exige ainsi: la base de cette maxime est qu'on ne possède ordinairement que les meubles dont on est propriétaire, ainsi la possession doit donc quant à ceci, décider; c'est le meilleur guide, et quel autre pourrait-on prendre sans tomber dans la confusion.*" I understand that the rule now recognized by the Code, to the effect that the property passes by the consent of the parties in a transaction, in its nature translatif of property, although no actual delivery has taken place, is in accordance with the law of England, yet there, I feel confident, that such a transaction as the one now in question, would not be sustained against an Assignee in bankruptcy, or an execution creditor. See the remarks in Benjamin on Sales, pages from 390 to 397; and in our law it would not admit of a doubt, unless the Civil Code has changed it much more than I apprehend it has. See the 2nd volume of Bourjon of the edition already cited, p. 692, tit. 8, *Des Exécutions*, cap. 3, sec. 1; No. 1. "*Après avoir expliqué les privilèges sur les meubles, voyons les revendications autorisées d'iceux. Le principe fondamental de cette matière est, que par rapport aux meubles, la possession d'iceux vaut titre de propriété; ainsi le déplacement y est bien important. De là il s'ensuit que chacun est présumé propriétaire des meubles qu'il possède, et que, par conséquent, ils peuvent être valablement saisis et exécutés sur celui qui les possède; première*