

dissolved in the same way that they are made, and in the presence of all the parties, it is absolutely necessary that he who wishes to avail himself of a right which he ceded or abandoned by a deed should commence by summoning all those with whom he contracted, that is to say, all the parties to the deed. By paying attention to this distinction between the two demands, it is easy to see why the right of property in a thing alienated in fraud of creditors may be disputed with any fraudulent holder of the thing, without calling in all those who participated in the fraud, whilst in the other case, proceedings must be taken against those who were parties to the contract. Moreover, when in the course of a suit, the court perceives that a third party whose interests may be affected by the contestation, has not been brought into the case, it ought to order that he be brought in, and not dismiss the action. Here the contestation is between the creditor who complains of the fraudulent sale made to his debtor, and the purchaser who participated in the fraud. That is sufficient, and the contestation will be maintained.

TESSIER, J., sent in a dissent, on the ground that Racine was in good faith.

The judgment is as follows:—

“Considering that the appellant has established by legal evidence that on and before the 13th of November 1877, the said appellant was a creditor of Marie Louise Lesage, defendant in the court below, for the sum of \$226.16, for which sum he recovered judgment against the said Marie Louise Lesage on the 4th of April, 1878, with interest on the said sum from the 16th of November 1877, and costs of suit;

“And considering that on the said 13th of November 1877, the said Marie Louise Lesage, being then notoriously insolvent, and unable to pay her debts, sold to the respondent a certain rosewood piano manufactured by ‘Miller,’ in payment of an antecedent debt, to wit, in part payment of a sum of \$428, which she then owed to the respondent;

“And considering that such sale was not made in the ordinary course of business, and that from the circumstances attending the sale, the respondent knew, or had reason to believe, that the said Marie Louise Lesage was then insolvent and unable to pay her debts;

“And considering that the sale so made is null and void as being in fraud of the other creditors of the said Marie Louise Lesage, and of the appellant in particular;

“And considering that it was competent for the said appellant to contest the validity of the said sale on a contestation of the declaration made by the respondent as *tiers saisi*, as was done in this cause, without proceeding by an *action révocatoire*;

“And considering further that in contesting a sale made by his debtor in fraud of his rights, and to which he was not a party, the appellant was not bound to summon in the cause all the parties to the sale, and it was sufficient for him to join issue with the party found in the actual possession of the goods and chattels or other property so fraudulently conveyed;

“And considering that there is error in the judgment rendered by the Superior Court sitting at Montreal on the 20th of May, 1878;

“This Court doth reverse the said judgment of the 20th of May, 1878, and proceeding to render the judgment which the said Superior Court should have rendered, doth adjudge and declare the said sale of the 13th of November 1877, null and void, as having been made in fraud of the rights of the appellant, and doth order that within fifteen days from the service of a copy of this judgment, the respondent do deliver unto the sheriff in and for the district, or to any bailiff committed to receive the same, the said rosewood piano manufactured by ‘Miller,’ which the said Marie Louise Lesage has conveyed to the said respondent as aforesaid; the said piano to be sold and the proceeds paid and distributed in due course of law, unless within the said fifteen days the respondent do pay to the appellant the said sum of \$226.16 with interest thereon from the 16th of November, 1877, and the costs incurred on the said judgment rendered on the 4th of April 1878, in favor of the said appellant against the said Marie Louise Lesage; and in default of the said respondent delivering the said piano, or paying the said debt, interest and costs as aforesaid, within the said delay of fifteen days, the said respondent is hereby condemned to pay to the appellant the said sum of \$226.16, with interest thereon from the 16th of November 1877, and costs as aforesaid, to be levied out of the goods and chattels and other property of the said respondent;