

a sale in order to avoid the necessity for an actual delivery to and a possession by the pledgee of the said plant, machinery and effects, as required by article 1970 of the Civil Code, to entitle the pledgee to a privilege and preference over the property so pledged ;

“ Considering that under the circumstances and without an actual delivery and possession by the pledgee of the property, the said deed can have no operation as against the rights and recourse of the creditors of the said firm of G. J. Gebhardt & Co., or to bar or obstruct their remedies in regard to it ;

“ Considering that by deed executed before Isaacson, notary, on the 13th day of June, 1881, the said firm of G. J. Gebhardt & Co. and the partners thereof sold, assigned, transferred and set over and delivered up to the appellant in this cause all their stock-in-trade, goods, chattels, fixtures, plant, book-debts, notes, accounts, books of account, and all other their personal estate and effects, including the whole or what remained as representing the plant, machinery and effects enumerated in the list or schedule annexed to said deed so executed on the said 27th day of April, 1880, and including all the plant, machinery and effects claimed by and seized at the instance of the respondent under the writ of *saisie-revendication* issued in this cause, to have and to hold the same upon the trusts and for the purposes mentioned in the said deed so executed on the 13th day of June, 1881, more especially for the benefit of the creditors of the said firm of G. J. Gebhardt & Co. ;

“ Considering that at the time of the issuing of the writ of *saisie-revendication* in this cause and the seizure thereunder made at the instance of the respondent, the appellant was lawfully in possession of all the moveables, effects and property claimed by the respondent, and seized at his instance under the said writ of *saisie-revendication*, and was so in possession and of right held the same under and in virtue of the said deed so executed before Isaacson, notary, on the 13th day of June, 1881, and from having had the same delivered to him in pursuance of the said deed, whereby and by reason of said delivery and possession, and the right thereby and by the said deed vested in him, he acquired

a right of property and of possession in and over said plant, machinery and effects, including those so claimed and seized in this cause, and that by priority and preference over any claim or pretention thereto on the part of the said Canada Paper Company or assigns ;

“ Considering that the respondent, as a creditor of the said firm of Gebhardt & Co., was a party to the said deed of sale and conveyance so made to the appellant, bearing date the 13th day of June, 1881, and consented thereto ; and considering that the appellant is entitled to oppose to the said respondent all the objections he might have opposed to the said Canada Paper Company, and to contest the validity of the said deed of pretended sale of date the 27th day of April, 1880 ;

“ And considering that the appellant is not a mere attorney, but on the contrary is vested as trustee for the creditors of the said firm of G. J. Gebhardt & Co., with all the rights purporting to be conveyed to him by the said deed executed before Isaacson, notary, on the 13th day of June, 1881, and is by law entitled to *ester en justice* for the protection of said rights ;

“ And considering that there is error in the judgment rendered by the Superior Court in this cause at Montreal on the 28th day of February, 1882, the Court of Our Lady the Queen now here doth reverse, annul and set aside the said judgment, and proceeding to render the judgment which the said Superior Court ought to have rendered, doth dismiss the action and demand *en revendication* of the said respondent, and doth award to the appellant *main-levée* of the seizure of the goods and chattels, property and effects seized in this cause, and doth condemn the respondent to pay to the appellant as well the costs incurred in the Court below as in this Court. (The Hon. Mr. Justice Monk dissenting).”

Judgment reversed.

*Dunlop & Lyman*, for appellant.

*S. Bethune, Q. C.*, and *J. Doutre, Q. C.*,  
counsel.

*Archibald & McCormick*, for respondent.