

disturb the settlement he has made with the municipality. Before concluding, I would say, with reference to one argument made before me, to wit, that this promissory note involved a loan of money made irregularly by the *tiers saisi*, that this note was *not* granted in order to the municipality's getting money. The contestation by the plaintiff is dismissed with costs.

*De Bellefeuille & Turgeon* for plaintiff.

*J. A. Ouimet* for *Tiers Saisi*.

[In Chambers.]

MONTREAL, Jan'y 13, 1879.

CANTWELL V. MADDEN.

*Effects under execution which have ceased to be in the possession of the Guardian—Order to seize in possession of third party.*

The plaintiff, by petition, alleged that the defendant, who had been appointed guardian of effects seized in the cause, under execution, had left the country, and that the effects were now in the possession of one Warren, who pretended that he had bought them. Plaintiff asked for an order to the bailiff to remove these effects from Warren's possession, in order that they might be sold under the execution in due course.

*Pagnuelo*, for the petitioner, cited l'Ordonnance de 1667, Tit. 19, Art. 17; 1 Pigeau, p. 628; 4 Quebec Law Rep. pp. 47, 49, *Moisan & Roche*, and *Gilbert & Coindet*.

*PAPINEAU, J.*, granted an order authorizing any bailiff of the Court to take and remove from the possession of said Warren the effects seized in the cause, "et pour ce d'employer et de se faire assister de toute la force nécessaire," a copy of the order to be served on Warren, with notice to him to appear and show cause why he should not be condemned personally in the costs of the petition and removal of the effects, &c.

*Duhamel, Pagnuelo & Rainville* for petitioner.

*Keller & McCorkill* for defendant, and Warren *mis en cause*.

AYLMER, October 7, 1878.

PHILION V. BISSON, and GRAHAM, opposant.

*Immoveables by destination—Opposition to annul by a hypothecary creditor of defendant.*

The case came up on an opposition to a seizure, as of moveables in the possession of defendant, the proprietor of a steam carding

mill, of "one ten-horse power steam engine, with boiler, belting, shafting and chimney complete, and one machine called a picker, painted red."

Graham, a hypothecary creditor, by opposition *à fin d'annuler*, set up that the steam engine and machinery formed essential parts of a steam carding mill, and that by destination and actual use, and as a fixture of the mill, it was immovable.

The Court (*BOURGEOIS, J.*) held the seizure to be an absolute nullity, the articles seized being immoveables by destination. The principal difficulty was as to the right of the opposant, who had a *bailleur de fonds* claim, to oppose the seizure. His Honor considered that he was entitled to oppose, and cited *Guyot vo. Opposition*, p. 424: "La partie saisie n'est pas la seule qui puisse former opposition afin d'annuler cette voie peut aussi être employée par les créanciers du saisi." Also 1031 C.C.: "Creditors may exercise the rights and actions of the debtor, when to their prejudice he refuses or neglects to do so." Opposition maintained.

*M. McLeod* for opposant.

*Aylen & Lawlor* for plaintiff contesting.

#### COURT OF QUEEN'S BENCH.

MONTREAL, December 18, 1878.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER and Cross, JJ.

BRUNEAU et al. v. MASSUE.

*Appeal in Contested Election Cases—Constitutionality of Dominion Controverted Election Act.*

Massue moved for leave to appeal from the judgment of the Superior Court on an election petition under the Dominion Controverted Elections Act. His election as a member of the House of Commons for the County of Richelieu had been contested by the petitioners, Bruneau et al., and respondent had pleaded a declinatory exception, alleging that the Dominion Parliament had no right to impose upon the Superior Court the duty of trying contested elections of members elected to the House of Commons. The exception was dismissed, and it was from this judgment that Massue asked leave to appeal.

Sir A. A. DORION, C.J., remarked that this Court had already decided in the case of