and the conveyance was made by them in fraud of their creditors.

The Judge of the Court below, maintained the Petition, and awarded the utensils to the Petitioner, now Respondent, and from this judgment the present appeal has been taken by Dupuy, the Assignee.

I am disposed to take a different view of the case, from that of the learned Judge of the Court below.

Under the law and practice of our courts, as it prevailed before the Civil Code was enacted, it will be conceded that no such title as that relied on by the Respondent would have prevailed against a seizure of the utensils in question, in the possession of McLeod, McNaughton & Léveillé; I do not see that the Code has so changed the law as to render such a title now efficacious.

On the first objection to the title submitted by the Appellant; that the contract was one of pledge, and as such inefficacious for want of possession in the pledgee; take the definitions given in the Code, respectively of the Contract of sale, and the Contract of pledge:

By art. 1472, a sale is defined to be a contract by which one party gives a thing to the other for *a price in money*, which the latter obliges himself to pay for it. Of the three essentials; 1st, the thing; 2nd, the price; and 3rd, the consent; there is in this case wanting, the second, viz. the price. The only substantial consideration here enunciated, was that the transferee was to endorse the paper of the transferor to the extent of $2,000, for which he was to have put in his control utensils, part of which only were valued at $4,890. The absence of a price divests the document of the character of a sale; and the endorsements to have been given as considerarion, go to shew that the object of the conveyance was to secure Cushing against his endorsements; and if McLeod, McNaughton & Léveillé took up their paper, the effects conveyed would, as a consequence, revert to them. It would therefore seem that the contract was not one of sale but of pledge.

Art. 1966, of the Civil Code, defines a pledge to be a contract by which a thing is placed in the hands of a creditor, or, being already in his possession, is retained by him, with the owner's consent, in security for his his debt. The contract in question in this case, is evidently one of this description. It is a transfer of moveables, without a fixed price, but with the obligation on the part of the transferee, to endorse notes for the pretended vendors, against which the effects transferred would stand as a security.

By Art. 1970, the privilege subsists only while the thing pawned, remains in the hands of the creditor, or of the person appointed by the parties to hold it.

This is not new law, but on the contrary in accordance with the rules and principles of common application before the Code came into force. No maxim was more universally received, nor better understood, than that moveable or personal property could not be affected by hypotheque—*le meuble n'a pas de suite par hypothèque.* There were, of course, exceptions of privilege, but these were special, and latterly a statutory exception in the case of warehouse receipts; the general principle was always recognized, and still remains the rule, notwithstanding any change of the law effected by the Code, so that to make a pledge effective, there has to be possession in the pledgee or his agent.

For want of possession in the pledgee, in the present case, the pledge was inefficacious.

It has been shown that the contract in question was not one of sale. But admit it to be so, for the sake of argument. Is the title of the Respondent good as a purchaser? The law formerly required a delivery, to vest the vendor's title in the purchaser: this is no more the case. Art. 1472 of the Civil Code declares a sale to be perfected by the consent alone of the parties, although the thing sold be not then delivered. By art. 1025—A contract for the alienation of a thing certain and determinate, makes the purchaser owner of the thing by the consent alone of the parties, although no delivery be made. Again, by art. 1027, the rule laid down by art. 1025, is made to apply as well to third parties as to the contracting parties, with the qualification that if a party obliges himself consecutively to two persons, to deliver to each of them a thing which is purely moveable property, that one of the