

We next come to the question of fraud and simulation. It is admitted that there was no *déplacement*, but it is contended that *déplacement* is no longer necessary under the Code, which makes the purchaser proprietor of the thing sold by the consent of parties alone, without even tradition, and much more, then, without *déplacement*. This view seems to have the express letter of the law in its favour, so that the remaining in possession by the vendor under a lease becomes only an indication under certain circumstances of simulation, and not a presumption. But in the Supreme Court, in the case of *Bell & Rickaby*,* a doctrine was held, which practically brings us back to the old rule, for there is really no difference in saying that without an effective tradition by *déplacement* the sale shall not affect third parties, and saying that where there is no *déplacement* fraud and simulation will be presumed. It is true that, in the case of *Cushing & Dupuy*,† the Privy Council did not go quite so far, and they found proof of simulation (not fraud, for it was not pleaded) in the absence of price. They said it was pledge, and the pledge was not transferred. That is, without any allegation of fraud, they said a contract was not that which the parties said it was. Although it would be possible to draw an argument in support of the opinion I expressed with the majority of the court in the case of *Bell & Rickaby*, and with the minority in the case of *Cushing & Dupuy*, I do not think this would be fair to the parties. It seems to me that both of our courts of appeal have declared themselves against concealed sales, and I am very glad they have been able to find law for it, which I willingly take from them on trust. In several cases we have applied the doctrine in the most absolute form. I may instance a case decided at Quebec; and again, recently here, in the case of *Thibaudeau & Mailly* (January, 1883), we held that, without fraud, where the object of a relative was to aid his kinsman, the deed would be considered simulated. This is going back to the old law *sans phrase*.

We are, therefore, to reverse the judgment with costs.

* 2 Supreme Court Rep. 560.

† 3 Legal News, 171.

The following is the judgment of the Court:—

“Considering that it appears by the evidence adduced in this cause that the pretended sale by the firm of G. J. Gebhardt & Co. to the Canada Paper Co. (limited), by the deed executed before Beaufield, notary, on the 27th April, 1880, of the plant, machinery and other movable effects enumerated in the list or schedule thereto annexed, comprised the whole or nearly the whole of the stock-in-trade, plant, machinery and effects at the time in use by the said firm of G. J. Gebhardt & Co. for the carrying on of their business, and without which they could not have carried it on;

“Considering that the sum of \$5,000 which the said firm of G. J. Gebhardt & Co. thereby acknowledged to have received from the Canada Paper Company as the consideration of the said pretended sale of said plant, machinery and effects was a fictitious price, the said plant, machinery and effects being at the time worth more than double that amount, and that said sum of \$5,000 was not then actually paid by the said Canada Paper Company, and that the true consideration for said pretended sale consisted of advances partly then already made and partly thereafter to be made by the said Canada Paper Company to the said firm of G. J. Gebhardt & Co.;

“Considering that it appears by said evidence that it was understood by the parties at the time of the execution of the said deed, that when the advances so made and to be made by the said Canada Paper Company to the said firm of G. J. Gebhardt & Co. should be reimbursed, the Canada Paper Company would reconvey the said plant, machinery and effects to the said firm of G. J. Gebhardt & Co.;

“Considering that it is made to appear by said evidence and the circumstances under which the said deed was passed, that the sale thereby pretended to have been made was simulated, and that the parties to the said deed intended thereby not to actually sell but only to pledge the said plant, machinery and effects as security for the reimbursement of the said advances;

“Considering that the said parties to the said deed gave to the transaction the form of