

JOHNSON, J. This suit began by the plaintiff revindicating as his a piano in the hands of the defendant. His title was a purchase of the instrument from a Madame Fournier on the 13th April, 1877. He was met by a plea alleging that on the 13th November the defendant had bought the piano from the same vendress, and had then got, and since kept possession of it. The plaintiff answered that his purchase had been anterior to that of the defendant; that the seller had no power to sell to another and the second sale was fraudulent and simulated. The judgment dismissed the plaintiff's action on the ground that the first buyer never got possession, and the second one did, while no bad faith was proved against him. I have not the slightest doubt that this is a correct judgment, and such is the unanimous opinion of the Court. Of course, if there were fraud on the defendant's part it would vitiate his possession, which is, however, under the circumstances, of itself title until the contrary is proved. The article 1027 clearly applies, and the plaintiff never had a right to revindicate at all, his recourse being evidently against his vendress only. I may add, that in my view, according to the evidence, it may be doubted whether it was ever contemplated that the plaintiff should get possession at all. Judgment confirmed. I may observe that this is not the case of purely and simply title by possession acquired from a non-proprietor. It is the case of the second purchase from the same vendor, which is exceptional, and provided for by the article in question.

Judgment confirmed.

De Lorimier & Co. for plaintiff.

Forget & Forget for defendant.

PARTNERS—CLAIM TO PROFITS MADE IN SEPARATE BUSINESS CONTRARY TO COVENANTS.

The Court of Appeal has, in the case of *Dean v. McDowell*, (31 L. Rep. N. S. 862), dealt in a question of extreme importance in the Law of Partnership. From the facts of that case it appears that the plaintiffs and defendants entered into partnership as salt merchants and brokers, and by the articles of partnership mutually covenanted not to engage, alone or with any other person, directly or indirectly, in any trade or business except upon the account and

for the benefit of the partnership. Two years before the expiration of the partnership by effluxion of time, the defendant purchased the business of a firm of salt manufacturers, and kept the matter secret from plaintiffs, putting his son into the business so purchased till the expiration of the partnership, when the defendant openly entered into the business of salt manufacturing, which was carried on in the name of the firm from which he had purchased it. The salt manufactured by the latter firm continued to be sold on commission by the plaintiffs' firm till the expiration of the partnership, from which time the defendant sold the salt himself, without employing a broker. The plaintiffs did not discover the trading by the defendant till after the expiration of the partnership, whereupon they filed a bill to make the defendant account to the partnership for the profits made by him in the other business during the partnership, and they subsequently brought an action against him in the Chancery Division, claiming that his interest in the other business formed part of the partnership assets. The suit and action were heard together by the Master of the Rolls, who was of opinion that the plaintiffs had no right to an account of the profits, but that, as the defendant had committed a breach of his covenant, the bill in the first suit must be dismissed without costs; and that the claim in the second action being extravagant, there must be judgment in it for defendant with costs. His Lordship pointed out that two clauses relied on by the plaintiffs merely amounted to this, that the defendant would devote himself diligently to his business and not engage in any trade except the partnership business. There was, however, no covenant that, if he violated these clauses, he was to account to the partnership for the profits made by him. The plaintiff appealed. In the argument on appeal a number of cases was cited. It will suffice for our purpose to touch upon a few of them.

The bill in *Somerville v. Mackay* (16 Ves. 382) alleged that the plaintiff entered into an agreement with the defendant for shipping goods to Russia upon their joint account, one of the terms of the agreement being that neither of them should send any goods upon their separate accounts to A. and Co., or to any other person in Russia. The bill prayed that the plaintiff