

The unpaid vendor, who had sold for ready money, had a right to proceed under Article 176 as owner; his position, therefore, would be quite different from that of the present plaintiff, who is not and does not claim to be the owner.

But the unpaid vendor, under a credit sale, had merely a privilege on the proceeds of the sale of his goods, in the same way as the plaintiff would have a privilege upon the proceeds of the hypothecated property if it were brought to sale. The unpaid vendor, under a credit sale, was not an owner, pledgee, depositary, usufructuary, institute, or substitute, within the meaning of Article 866 of our Code of Procedure, and yet he was constantly allowed to protect his privilege by a *saisie-conservatoire*, which in this district was called a *saisie-revendication*, and which differed but little, if at all, in legal effect, from the process now before the Court.

In three cases reported (2 L. C. J., p. 101), it appears to have been decided by Mr. Justice Mondelet and Mr. Justice Smith that an unpaid vendor, who had sold on credit, might seize the goods sold, in the hands of the vendor, who had become insolvent.—(Lower Canada Jurist, vol. 2, p. 101.)

A decision to the same effect was rendered by Mr. Justice Badgley in *Le Duc v. Tourigny* (5 Jur. 123), and by Mr. Justice Monk in *Baldwin v. Binmore* (6 Jur. 297)—the process being spoken of in the two cases last mentioned as a *saisie-conservatoire*.

In the following years, in this district, in the case of *Poston v. Gagnon* (12 L. C. Rep. 252), the plaintiff, an unpaid vendor, who had sold on credit, sued out a *saisie-revendication*; and the only question which seems to have been discussed, was as to whether the plaintiff had a right to a *saisie-revendication* without an affidavit.

Sir A. A. Dorion, in rendering the judgment of the Court of Appeals in *Henderson v. Tremblay* (21 Jur. p. 24), referred approvingly to the judgments in *Torrance v. Thomas*, *Leduc v. Tourigny*, and *Baldwin v. Binmore*, above cited, observing:—"Les tribunaux du pays ont souvent permis aux parties intéressées de pratiquer des *saisies-conservatoires* pour protéger, dans des cas analogues, des droits qu'elles étaient exposées à perdre."

The judgment of the Court of Appeals in

*Henderson v. Tremblay*, itself, has an important bearing on this case.

The plaintiff in that case, as an unpaid vendor, had sued out a *saisie-revendication*; the Court of Appeals declared that the sale was on credit, and therefore that the plaintiff was not in a position to exercise the right of *revendication*, but they at the same time said, that although the attachment by the plaintiff was "in the nature of a *saisie-revendication*, it would nevertheless avail to him as a *saisie-conservatoire*."

The contention of the plaintiff is that if, as the defendants maintain, he be not entitled to a *saisie-revendication*, under Article 866, then that he must have a remedy under Article 21, which declares that "whenever the Code does not contain any provision for enforcing or maintaining some particular right or just claim, or any rule applicable thereto, any proceeding adopted which is not inconsistent with law, or the provisions of this Code, is received and held to be valid."

The plaintiff further contends that the remedy which he has adopted protects his rights without interfering with the rights of any other person,—and such seems to me to be the case, for the effect of the writ, so far as we now can see, is merely to prevent the carrying away of property hypothecated in favour of the plaintiff; and as to the name given to the writ, I do not think it ought to materially affect the question to be decided.

It is to be recollected that when the judgments of the Superior Court, of which I have spoken, were rendered, the defendants could urge, and did urge, the provision of the 27th George III., declaring that attachment before judgment should be allowed in certain cases only; and that the case of the unpaid vendor, who had given credit, was not one of those cases. Also that we had not, at the time of the rendering of those judgments, any general provision, such as is to be found in Article 21 of the Code of Procedure already cited; and if our courts, without any provision of law, such as that last mentioned, and notwithstanding the 27th George III., allowed the unpaid vendor the benefit of a *saisie-conservatoire* for the protection of his privilege, it seems to me that the courts now ought to allow the plaintiff, as a privileged and hypothecary creditor, a like