

date the 5th of April, 1880, whereby he directed that his son John Ogilvy Macrae, and his three daughters—Lucy Caroline Macrae, Ada Beatrice Macrae and Catherine Alice Lennox Macrae—should be entitled equally, share and share alike, to the trust fund over which the said John Octavius Macrae had a power of appointment, under his father's will ;

“ Considering that the said John Octavius Macrae had by law under the disposition of the will of his late father, William Macrae, not only the right to apportion between all his children as well those of his then existing marriage or of any future marriage, but also the right to dispose of said property in favor of one or more of his said children to the exclusion of the others as he has done by his said last will ;

“ And considering that the respondent in his said capacity has no right to any portion of the property claimed by his action, and that there is error in the judgment rendered by the Superior Court, etc., etc. This Court doth reverse,” etc., and action dismissed.

Judgment reversed.

Tait & Abbotts for Appellants.

Girouard, Wurtele & McGibbon for Respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1884.

DORION, C.J., MONK, RAMSAY, CROSS, BABY, J.J.

MOFFATT *ès qual.* (def. below), appellant, and BURLAND (*plff.* below), respondent.

Powers of assignee of insolvent—Concealed Sale.

1. A person holding property as trustee under a deed of conveyance from an insolvent firm is by law entitled to *ester en justice* for the protection of the rights conveyed to him by such deed ; and accordingly in the present case it was held that such trustee was entitled to plead in his own name to an action of *revendication* based on a pretended sale from the insolvents to the plaintiff.
2. Though *déplacement* is no longer necessary to the validity of a sale, yet where there is no *déplacement* fraud and simulation are easily presumed ; and where a pretended sale was a mere contrivance intended to obtain, under

color of a sale, a security upon the effects, and thus avoid the delivery of possession which is essential to the validity of a pledge, it was held inoperative.

The appeal was from a judgment of the Superior Court, declaring the respondent proprietor of certain machinery, lithographic printing presses, etc.

RAMSAY, J. This is an appeal from a judgment maintaining a *saisie-revendication* of certain articles used in the business of lithography. The action is directed against the members of a firm formerly existing under the style of Gebhardt & Co., and against the appellant, assignee of the firm, to whom all the property has been absolutely transferred for certain purposes.

The appellant alone pleaded, setting up that the deed on which respondent relied was fraudulent and simulated as between him and Gebhardt & Co. The judgment maintained the action on two grounds ; the first of which was that the plea of simulation and fraud was no answer to the action in the mouth of appellant, because he was only a trustee, and that, under Art. 19, C.C.P., no one can plead in the name of another. It is perfectly true that no one can plead in the name of another, but Moffatt pleads in his own name under the deed of conveyance to him of the rights of all the parties. He has, therefore, a legal title, and I think he can plead in his own name, and no one has an interest to raise the question, and certainly not the parties to the deed of trust, one of whom is the respondent. The case of *Brown & Pinsonneault* is not in point, and *De Chantal & Thomas* is, if anything, against respondent's pretension. It seems to me a more subtle question presents itself, and that is, how far, under a joint assignment of the kind, and representing Gebhardt & Co. as well as the creditors, the appellant can urge the fraud and simulation of Gebhardt & Co. We think he can, and for this reason—that the assignment conveyed to Moffatt the rights of the creditors, who could contest the validity of the deed between Gebhardt & Co. and Burland, and that Gebhardt & Co. being parties to the deed did not of itself affect the rights of the creditors conveyed to Moffatt.