

The intervenants claimed to be the owners of four horses seized in the possession of one Currie, at the instance of Hotte.

The intervenants' claim was based on a deed before notary, of 26th January, 1875, from which it appeared that Currie, being then indebted to the intervenants in the sum of \$497.58, transferred the horses to them to secure this debt; the animals were to remain in their possession until August 1st, 1875, when Currie might take them back if the debt was paid.

The material portion of the deed was as follows:—"Et pour sûreté du remboursement et paiement d'icelle somme, le dit David Currie, débiteur, a transporté et mis ès mains du dit Clarke Gordon" les chevaux et harnais, et "ce dernier pourra en jouir à sa disposition sans néanmoins encourir aucuns risques, jusqu'au paiement par le dit comparant de la somme suscitée, temps auquel le dit Clarke Gordon remettra les dits objets ès mains du dit débiteur, et si au contraire, le dit terme, 1er Aout, échu, le dit débiteur n'a pas effectué le remboursement de la dite somme, le dit Clarke Gordon gardera pardevers lui les dits objets et en sera et restera propriétaire."

The debt was not paid before 1st August, but the intervenants, in the opinion of the Court, had not taken possession of the horses, and they were seized 31st August, 1875, in Currie's possession. The Court below considered that the agreement of 26th January, 1875, was simply a pledging of the horses, and as they were not in the possession of the intervenants at the time of the seizure, the latter had no privilege. The *motif* of the judgment was as follows: "Considérant spécialement qu'il est prouvé que les intervenants ont pris du défendeur, à titre de sûreté du paiement de leur créance par l'acte en question du 26 Janvier, 1875, les chevaux et harnais y mentionnés, et qu'ils n'en ont jamais eu la possession actuelle et réelle depuis le mois de Mai, 1875, jusqu'au temps de la saisie, &c., déboute la dite intervention."

In appeal, this judgment was held to be correct, and was confirmed unanimously.

C. H. Stephens for appellants; Trenholme & MacLaren counsel.

Ouimet, Ouimet & Nantel for respondent.

COMP. DE PRET ET CREDIT FONCIER (pliffs. below), Appellants, and BAKER et al. (*adjudicataires* below), Respondents.

*Sheriff's Sale—Misdescription of immoveable—Sale vacated.*

The appeal was from a judgment of the Superior Court, Montreal, (Johnson, J.) granting the petition of the *adjudicataires*, and setting aside a *décret*.

The *adjudicataires*, respondents, had bought at sheriff's sale an immoveable in Delisle Village, described as being 45 feet front by 90 feet deep. After paying for the property, they discovered that it was only 30 feet front, whereupon they presented a petition, under 714 C. C. P., alleging that they would not have bought the property had they been aware of the deficiency in contents, and asking that the sale be vacated. The plaintiff contested this petition, alleging that the sale was without warranty as to contents, and that the *adjudicataires*, being themselves the *auteurs* of Peladeau, defendant in the cause, were aware of the actual contents of the property.

The Court below maintained the petition, and set aside the *décret*, "but considering that petitioners were the original vendors as well as *adjudicataires*," the petition was maintained without costs.

Appellant argued that the sale was without warranty as to the contents of the immoveable (708 C. C. P.); and further that the cadastral number was a sufficient description, (C. C. 2168). The claim of the *adjudicataires* was based on C. C. 714: "Sheriff's sales may be vacated &c. if the immoveable differs so much from the description given of it in the minutes of seizure, that it is to be presumed that the purchaser would not have bought had he been aware of the difference." Now, the *adjudicataires* here, being the immediate *auteurs* of the defendant, could not claim any right under this article. The appellant also urged that the defendant had not been served with the petition, as 715 C. P. required.

The judgment was unanimously confirmed in appeal.

M. E. Charpentier for appellant.

Barnard & Monk for respondents.