

ter refused, citing 564 C. C. P. : " If current money is seized, mention of its kind and quantity must be made in the inventory, and the Sheriff must return it with the monies levied." The petitioner submitted that this was a command to seizing officers to retain in their own possession, till return of the warrant of execution, any current moneys seized.

Lighthall for petitioner :—C. C. P. 564 has not such a meaning, but merely directs the seizing officer to return such money at the same time as the monies levied from the sale. Meanwhile it ought to pass, like other articles, into the guardian's possession. See Art. 560. " The Sheriff or officer making the seizure, is bound to accept a solvent depository offered by the debtor." Cf. Art. 562.... " that the property seized be placed under his care.... " after a verification and inventory of the whole has been made." If held otherwise, a defendant, or third party, might be put to great loss during a seizure where the whole seized was in cash, and lose entirely the benefit of offering a guardian or surety. As a matter of fact, in the present case, all the ready cash of a third party's business was taken away and held by the bailiff.

DeBellefeuille, contra :—The word " must " in Art. 564 is " imperative," not " facultative," therefore the bailiff is obliged to hold the currency until he returns the other moneys levied.

The Court held the latter view, and thus interpreting articles 564 & 601, dismissed the petition.

W. D. Lighthall, for petitioner.

E. Lef. DeBellefeuille, for *mis en cause*.

(W. D. L.)

SUPERIOR COURT.

AYLMER, (Dist. of Ottawa,) Feb. 24, 1887.

Before WURTELE, J.

LAVELL v. McANDREW.

Action en bornage—Rents, issues and profits—Possession—Annulment of letters patent.

Held:—1. That a demand for damages or compensation for fruits, issues and profits, cannot be included in an action of boundary.

2. That in order to bring and maintain an ac-

tion of boundary, it is necessary to be in possession, under claim of ownership, of the body of the property for which a boundary is sought.

3. That letters patent granted by the Crown, for land, cannot be annulled at the suit of a private individual, and can only be declared null and repealed upon information brought by one of the law officers of the Crown.

PER CURIAM.—The action in this cause is one of boundary, to which the plaintiff has joined a demand for past fruits and issues.

The defendant pleads by demurrer: 1. That the lands in question are not contiguous, and that an action for boundary consequently does not lie; and 2. That a demand for damages, or compensation for fruits and issues, cannot be included in an action for boundary.

He also pleads, by a peremptory exception, in the first place, that the plaintiff is not in possession as owner of the land in respect of which he claims a division line and boundaries; and, in the next place, that the letters patent granted to the plaintiff for the land claimed by him were obtained by fraud, and should be declared null and repealed by the Court.

The plaintiff has answered this exception in law; alleging, in answer to the first allegation, that the defendant cannot question his title, and in answer to the other allegation, that letters patent granting lands can only be annulled at the suit of the Crown.

Both the demurrer and the answer in law are now before the Court for judgment.

I will first take up the demurrer.

A reference to the declaration shows that it does not appear by the allegations that the lands in question are not contiguous. Whether they are so or not is a question of fact, requiring investigation and proof, but is not matter for a demurrer. The first ground of demurrer must, therefore, be rejected.

The object of an action of boundary, according to Articles 941 and 945 of the Code of Civil Procedure, is solely to determine the boundaries between two contiguous lands and, if necessary, to place boundary marks in the division line. *Prévôt de la Jannés*, vol. 2, No. 585, thus defines this action:—*" L'action de bornage est celle par laquelle*