

"delivery, and, 2, the warranty of the thing sold." By Art. 1492 of the same Code, delivery is declared to be "the transfer of a thing sold into the power and possession of the buyer;" whilst the following Article (1493) is to the effect that the obligation of the seller to give delivery is satisfied "when he puts the buyer in actual possession of the thing, or consents to such possession being taken by him, and all hindrances thereto are removed."

These articles of the Civil Code merely lay down certain well known rules as to delivery, incidental to the contract of sale, which are common to most, if not to all systems of jurisprudence, and these rules are not in the least inconsistent with any of the formalities and proceedings prescribed by the Code of Civil Procedure in the case of judicial sales. Upon the completion of the contract, there immediately arise mutual rights and obligations on the part of the seller and the purchaser. When the subject of the sale is an *immeuble*, the obligation of the seller is to give the purchaser peaceable possession, and also a clear title, to enable him to defend his possession, and it is the right of the seller, upon fulfilment of that obligation, to demand and receive payment of the price. On the other hand, the obligation of the purchaser is to pay the price upon delivery of possession and of a title sufficient to protect him from eviction. Neither of the parties can exact performance from the other, except upon the condition of fulfilling his own part of the contract.

It was urged on behalf of the respondent Company that the sale to the appellant was perfected by the adjudication of the sheriff upon the 28th August 1882, and that such adjudication had the legal effect of transferring the property to the appellant, and of giving him, at the same time, an unencumbered title. Now, it is not matter of dispute that the sugar factory buildings and the machinery were sold together as an *immeuble*, and, that being the case, the argument of the respondent Company does not appear to be consistent with Article 706 of the Procedure Code, which declares that "no adjudication is perfect until the price is paid, and then it conveys ownership from the time of its

"date." But, assuming that the adjudication did pass the property of the thing sold to the purchaser, that would not, in the opinion of their Lordships, relieve the seller from the performance of the legal obligations incumbent upon him, arising out of the completed contract of sale. The respondent's argument upon this part of the case confounded two matters which are essentially distinct, the perfection of the contract and its due performance. If the appellant had bought a mere title there would have been room for the respondent's contention, but the thing exposed to sale by the sheriff and purchased by the appellant was a sugar factory, and the obligation of the seller, under the completed contract of sale and purchase, was to give him actual possession of the factory.

It was also suggested, in the argument for the respondents, that, in the case of a judicial sale, it lay with the purchaser to take judicial proceedings, if these became necessary, for attaining possession of the property sold to him. The suggestion was based on the terms of Article 712 of the Procedure Code, which provides that a purchaser, who cannot obtain delivery of the property sold from the judgment debtor, must demand it of the sheriff, and upon the sheriff's return or certificate of the refusal to deliver, may apply to the Court for an order commanding the sheriff to dispossess the debtor, and to put the purchaser in possession. The remedy thus provided is a summary method of ejecting the judgment debtor, whose right and interest in the property has already been extinguished by a series of regular judicial proceedings. It has no analogy to the case of a preferable claim, such as is here asserted by the Crown, coupled with actual possession by the claimant, under a formal legal warrant.

A claim of that kind, even assuming that it may ultimately prove to be invalid, can only be determined, and possession recovered, by means of a new litigation which may last for years. It would be contrary to well recognized principles of law and equity to hold, and there is no authority to be found, either in the Civil or Procedure Code, for holding that such a hindrance to the purchaser's obtaining possession must, in the case of an ordinary contract of sale, and in