The Legal News.

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A decision of considerable interest is that which has been delivered by the Judicial Committee of the Privy Council in the case of *Prévost & La Compagnie de Fives-Lille*. The purchaser of a property at sheriff's sale refused to pay the price, because he found that the customs duties upon certain machinery incorporated with the building had not been paid, and that the Crown had then actual possession of the property, and asserted a preferential claim for the duties. The *adjudicataire* petitioned to set aside the *décret*. The courts in Montreal refused this petition, and held that the *adjudicataire* was liable to *folle enchère* for non-payment of the price. The Court of Queen's Bench declared that the property was freed from the Crown claim by the sheriff's sale, and that the *adjudicataire* had a clear title. The Judicial Committee do not decide whether a sheriff's sale purges a Crown claim or not. But they decide that the purchaser is not bound to take property which is actually held by a third party under a legal writ, and that unless the purchaser is put in possession he is not bound to pay the price. This seems to be a reasonable view of the purchaser's position, especially if the sheriff's sale does not discharge the property from a Crown claim; C. C. P. 714, s. 2.

The Lord Mayor of London, whose experience goes back thirty-five years or more, declared recently that the thoroughfares of the metropolis have within the last six weeks been flooded with obscenity to an extent unparalleled in his observation during that period. "The result," he added, "was that things had got to a sad pitch, and some strong action was necessary." Another magistrate of experience has also testified to the deplorable effects of *Pall Mall Gazette* literature and its imitations. It is worth while noting these expressions of experienced observers as opposed to the judgment of a person like Mr. Stead, who, it seems, had never been inside the doors of a police court in his life.

The fifth annual report for 1884 of the inspector of retreats under the English Habitual Drunkards' Act, 1879, shows that five such retreats have been licensed under the Act. Accommodation is provided for sixty-two licensed patients. There were seventy-two patients admitted during the year, sixty-two of whom were discharged. The inspector thinks that, as a rule, the retreats have worked well. Of twenty-five cases of inebriety specially investigated the education of all was fairly good, in four cases marked "college," and the social position that of a gentleman. Thirteen were married, one a widower, and the rest single. In reply to the question what kind of liquor the patient has been most addicted to, one unprejudiced gentleman, who has had *delirium tremens* five times, answers "all sorts."

PRIVY COUNCIL.

LONDON, July 18, 1885.

Coram LORD WATSON, LORD MONKSWELL, LORD HOBHOUSE, SIR BARNES PEACOCK, SIR RICHARD COUCH.

PRÉVOST (adjudicataire et requérant en nullité de décret), Appellant, and LA COMPAGNIE DE FIVES-LILLE (plaintiff), Respondent, and Atty.-Gen., Intervenant.

Rights of the Crown—Customs duties—Sheriff's sale—Rights of adjudicataire—Folle enchère.

HELD—*That the adjudicataire of an immoveable at sheriff's sale is entitled to have the sale set aside where it appears that the Crown asserts a preferential claim upon machinery contained in the building and incorporated therewith, and that the property is under seizure at the instance of the Crown by virtue of a writ of assistance. The adjudicataire is entitled to delivery of the thing purchased, and even if the claim upon the property may ultimately prove unfounded, he is not obliged at his own expense to remove the hindrance to his possession.*

The judgment of the Judicial Committee reversed a judgment of the Court of Queen's

Bench, Montreal, January 23, 1884, (Dorion, C. J., Monk, Tessier, Cross and Baby, JJ.) In rendering the judgment at Montreal, Dorion, C. J., observed:—

La compagnie de Fives-Lille, ayant obtenu jugement contre l'Union Sucrière Franco-Canadienne, fit saisir ses usines pour manufacturer du sucre de betterave dans la ville de Berthier. Les usines furent adjugées, le 28 août 1882, à l'appelant, pour la somme de $76,000.

L'appelant ayant refusé de payer le prix d'acquisition, la compagnie de Fives-Lille a demandé un bref de *venditioni exponas* pour faire vendre la propriété saisie à la folle enchère de l'appelant. De son côté l'appelant a demandé la nullité du décret, en se fondant sur ce que depuis la vente qui lui avait été faite, le gouvernement de la Puissance avait fait saisir les ustensiles formant partie des usines qui lui avaient été adjugées et qu'il n'en pouvait avoir la possession.

En réponse à la demande de la compagnie de Fives-Lille pour folle enchère, l'appelant a opposé les moyens invoqués dans sa requête en nullité de décret et, de plus, que la couronne avait un privilège sur les immeubles décrétés, qui n'avait pas été purgé par le décret.

La demande pour folle enchère et la demande en nullité de décret ayant été réunies, la cour de première instance a jugé que le décret avait purgé les droits de la Couronne, et que rien ne pouvait empêcher l'appelant de se faire mettre en possession des immeubles vendus, en par lui payant son prix d'adjudication.

Sur l'appel, le procureur-général, Sir Alex. Campbell, a demandé à ce qu'il lui fût permis d'intervenir pour protéger les droits de la Couronne, et il a conclu à ce que le jugement qui ordonnait la vente des usines en question à la folle enchère de l'appelant fût mis de côté, et à ce qu'il fût déclaré que la Couronne avait droit de retenir les usines en question jusqu'à ce qu'elle eût été payée des droits d'importation, se montant à $22,000, dus sur les ustensiles servant à la manufacture des sucres que l'on fabrique dans les usines adjugées à l'appelant.

La cour a permis au procureur-général d'intervenir dans la cause, en se fondant sur l'article 1166 du Code de Procédure Civile qui, en termes exprès, autorise la cour à permettre à une partie intéressée d'intervenir dans une cause en appel, comme elle l'a déjà permis dans la cause *Mechanics Bank & St. Jean, & Wylie*, intvt., rapportée au vol. 2 Legal News, p. 315.

Sur le mérite des contestations tant entre l'appelant Prévost, qu'entre le procureur-général et la Compagnie de Fives-Lille, il s'agit de savoir quel a été l'effet de la vente faite par le shérif le 28 août 1882. L'appelant prétend qu'il est exposé à être évincé par la Couronne d'une partie notable de la propriété qu'il a achetée du shérif et que, de fait, il ne peut en être mis en possession; de son côté, la Couronne prétend qu'elle a fait saisir, comme elle en avait le droit, les ustensiles importés par l'Union Sucrière de Berthier, et sur lesquels les droits d'importation n'ont pas été payés. La Compagnie de Fives-Lille répond à cela, que c'est avec la permission de la Couronne que les ustensiles ont été livrés à l'Union Sucrière Franco-Canadienne et qu'ils ont été placés dans les usines de la compagnie; que la Couronne n'ayant pas fait d'opposition à la vente des usines ses droits ont été purgés et qu'elle ne peut troubler l'appelant, qui s'est rendu adjudicataire des usines, y compris les ustensiles qui en font partie.

Il appert par la preuve et les admissions des parties que les ustensiles qui sont dans les usines de l'Union Sucrière de Berthier, ont été importés il y a quelques années, et que la Couronne a accordé à l'Union Sucrière deux ans pour payer les droits d'importation sur ces ustensiles, avec permission de s'en servir dans l'intervalle, la Couronne prenant, comme sûreté pour le paiement de ses droits, la garantie de M. Adolphe Masson, président de l'Union Sucrière, avec déclaration que ces ustensiles seraient considérés comme étant en entrepot dans les usines de la Compagnie. Ces ustensiles consistent dans des bouilloires et autres objets, qui ont été incorporés aux usines et en font partie.

La vente a eu lieu le 28 août 1882, sans que la Couronne ait fait aucune opposition à la vente, soit afin de distraire ou afin de charge, quoiqu'il appert qu'elle ait été informée par M. Masson lui-même, que la vente devait avoir lieu. Le lendemain seulement de la vente, c'est-à-dire le 29 août 1882, le

nommé J. Bte. Coallier, agissant d'après les instructions de John Lewis, député collecteur des douanes de Montréal, se rendit sur les lieux pour saisir et saisit tous les ustensiles contenus dans les usines. Cette saisie a eu lieu, parait-il, en vertu d'un bref d'assistance. Tout cela n'est prouvé que par le témoignage de Coallier et de Pierre Tellier, qui a été nommé gardien à cette saisie.

Il est constant que la vente par le shérif purge toutes les réclamations que des tiers peuvent avoir contre des propriétés vendues, et transmet à l'adjudicataire, en par lui payant son prix d'adjudication, tous les droits de propriété du débiteur sur qui la vente a lieu. Telles sont les dispositions de l'art. 598, C.P.C., qui a rapport à la vente des meubles, et des articles 706 et 711, même code, qui ont rapport à la vente des immeubles. Ces dispositions affectent aussi bien la Couronne que les particuliers. La Couronne, qui a des droits à faire valoir devant les cours de justice, est tenue à faire valoir ces droits en la forme indiquée par le Code de Procédure Civile et, à défaut de le faire, elle peut être privée de ses droits comme tout autre intéressé. Cette règle a été reconnue en principe dans deux causes: *Attorney General & Black*, Stuart's Rep. 325, et dans celle de *Monk & Ouimet*, 19 L.C.J. 71. La Couronne aurait donc dû faire une opposition afin de distraire en vertu de l'art. 658 C.P.C., et à défaut de le faire, elle a perdu le droit de s'opposer à la vente des ustensiles sur lesquels elle réclame un privilège.

Il est vrai que l'on a produit dans la cause une lettre du 26 août 1882, adressée par l'assistant collecteur des douanes au shérif du district de Richelieu dans les termes suivants:—

"Sir, I beg leave to inform you that I am instructed by Customs Department to notify you, and have to request that you will be pleased to notify all concerned, or who, by virtue of a sale by you, may become interested, that the machinery and other articles in the Beet Root Sugar Refinery or Manufactory or the premises attached thereto, at Berthier, in the Province of Quebec, are held by the Crown, under bonds, for customs duties, and that if sold, it must be conditionally that said duties shall be paid before any of said machinery are removed. I am, Sir, your obedient servant, John Lewis."

Cette lettre parait avoir été remise au shérif avant la vente; mais comme elle n'était pas dans la forme d'une opposition afin de distraire, et après l'expiration des délais dans lesquels une semblable opposition aurait dû être faite, le shérif ne pouvait, sur un pareil document, suspendre la vente, et il s'est contenté de la rapporter avec son retour, sans suspendre ses procédés. La saisie avait été faite sur l'Union Sucrière, qui était en possession des usines et des ustensiles qu'elles contenaient, et rien ne pouvait arrêter les procédés du shérif, qu'une opposition régulière.

La vente, en ce qui regarde l'appelant, est donc valable et, aussitôt qu'il aura payé son prix d'adjudication, il pourra se mettre en possession des propriétés adjugées, et, en refusant de payer son prix, il s'expose à ce que la propriété soit vendue à sa folle enchère, en vertu de l'art. 690 C.P.C.

La Couronne a prétendu que l'adjudicataire, n'ayant pas payé son prix d'adjudication, la vente, d'après l'article 706 C.P.C., n'était pas parfaite et qu'elle était encore à temps de faire valoir ses privilèges sur les objets saisis; mais il faut observer que, lorsque l'art. 706 dit que l'adjudication n'est parfaite que par le paiement du prix de vente, cela veut dire que la vente n'est pas parfaite relativement à l'adjudicataire s'il n'a pas payé son prix, mais cet adjudicataire peut toujours demander à payer son prix de vente et être mis en possession de la propriété qui lui a été adjugée, tant que cette propriété n'a pas été revendue à sa folle enchère. *Nye* v. *Potter*, 5 L.C.J. 21).

De plus, après une première adjudication, nulle opposition afin de distraire ou afin d'annuler, qui aurait dû être faite avant cette adjudication, ne peut être reçue, (*Evans & Nichols et al.*, 1 L.C.R. 151; Art. 664, C.P.C. et causes citées sous cet article dans l'ouvrage de Foran, p. 350).

Nous sommes donc d'opinion que l'appel de l'adjudicataire est mal fondé, et que le jugement, qui ordonnait que la propriété soit revendue à sa folle enchère, est bien fondé.

Nous croyons, cependant, que le jugement de la Cour inférieure déclarant que la vente

du shérif a purgé les privilèges et hypothèques sur les immeubles vendus peut donner lieu à une fausse interprétation. Le décret n'a pas eu l'effet de faire perdre le privilège de la Couronne, qui ne consiste pas dans un droit de rétention, puisque la Couronne peut exercer son privilège sans avoir jamais eu la possession des articles sur lesquels les droits sont dus. Aussi nous croyons devoir déclarer, par le jugement que cette Cour est appelée à rendre, que le privilège que la Couronne avait pour être payée des droits d'importation qui lui sont dus n'existe plus sur les ustensiles même qui y étaient affectés, mais qu'il a été transféré sur la partie du prix de vente qui représente ces ustensiles, conformément à l'art. 729 du Code de Procédure Civile, et elle réserve à la Couronne de faire valoir ses droits sur ce prix lorsqu'il aura été payé, ou sur le prix qui proviendra de la vente qui sera faite à la folle enchère de l'appelant (2 Bourjon, 725). La réclamation de la Couronne n'est tout au plus que de $22,000, et la propriété a été vendue $76,000. La Couronne n'est donc pas exposée à perdre ses droits. Ell ne pouvait, dans tous les cas, pour être payée de sa créance que faire vendre les ustensiles pour lesquels les droits d'importation n'ont pas été payés, et la vente de l'usine entière doit assurer un meilleur prix que si les ustensiles sur lesquels la Couronne a un privilège étaient séparés de l'usine même. Le jugement que nous rendons assure les droits de tous les intéressés.

Quant au frais, la Cour croit que l'appelant, à raison des procédés adoptés par la Couronne, avait quelque raison de craindre d'être troublé et que son opposition n'était pas tout à fait futile. Si la Couronne était intervenue plus tôt pour faire valoir ses droits, les contestations qui ont eu lieu auraient été évitées. Nous pensons que les frais qu'elles ont occasionnés, tant sur la contestation en Cour inférieure que sur la contestation en Cour d'Appel, doivent être payées à même les deniers provenant du prix de vente, qui seront adjugés à la Couronne.

The following is the judgment of the Judicial Committee of the Privy Council:—

PER CURIAM. The respondents, La Compagnie de Fives-Lille, on the 25th May 1882, recovered judgment in the Superior Court of Lower Canada against the Union Sucrière Franco-Canadienne, for $33,293.69, with interest; and on the 10th June 1882, a writ of *fieri facias* was duly issued to the sheriff of the district of Richelieu, directing him to levy that sum upon the property, real and personal, of the judgment debtors. The sheriff, in execution of the writ, seized certain buildings, with the fixed machinery therein, belonging to the judgment debtors, which had been erected and used by them for the manufacture of beet-root sugar, situated in the parish of Berthier and district of Richelieu, and advertised the same for sale, as an *immeuble*, upon the 28th August 1882.

On the morning of the day of sale, John Lewis, an officer of the customs at Montreal, intimated to the sheriff, by letter, that the fixed machinery of the sugar factory was held by the Crown, under bond, for unpaid import duties, and could not be sold, unless subject to the condition that these duties were to be paid before any part of the machinery was removed from the premises. The claim thus asserted on behalf of the Crown became known to the appellant, Arthur Prévost, as well as to many other persons, who attended, on the 28th August 1882, for the purpose of bidding at the sale. Accordingly, the appellant Prévost, before the bidding commenced, asked the sheriff whether the property was to be sold free of all charges, to which the sheriff answered, "Yes." The bidding then went on; and eventually the property was knocked down, and adjudicated to the appellant, at the price of $76,000. That the sale was conducted, and the purchase made by the appellant, on the distinct footing that the property was sold free of all charges, is made perfectly clear by the return of the sheriff, in which he expressly states that he disregarded the intimation given to him by Lewis, being of opinion that he had no authority to give effect to the condition which the Crown sought to impose.

On the 29th August 1882, the day after the sale, the customs' authorities acting in virtue of a formal *bref d'assistance*, seized the whole machinery in the sugar factory, and placed it under the charge of one of their officers. Thenceforth, the machinery remained in the

custody and possession of the Crown authorities, who refused to give delivery, or to allow delivery to be made to any one, until the whole import duties chargeable in respect of the machinery were paid, although they expressed their wilingness to give access to the machinery for the purpose of cleaning and preserving it. They alleged that the factory had been duly constituted a customs or bonded warehouse, for the safe-keeping of the machinery, by an Act of the Governor in Council, in terms of the Dominion Customs Act, 40 Vict., cap. 10; that the sale, so far as regarded the machinery, was void, inasmuch as it was in the possession of the Crown, and not of the judgment debtors; and, at all events, that so long as it remained in the factory, which had been constituted a warehouse within the meaning of the Customs Act, no sale by the sheriff could defeat the right of the Crown to retain the custody of the machinery until the import duties were paid.

In terms of Article 687 of the Procedure Code, the purchaser at a sale by the sheriff in execution is bound to pay the price within three days. On the lapse of that time, the sheriff, before making his return, addressed a letter to the appellant, requiring him to make payment of the price; and received a reply, through a solicitor, to the effect that the appellant was not prepared to pay, because the sheriff was unable to make delivery to him of the property which he had purchased.

On the 3rd October, 1882, the appellant presented a petition to the Superior Court, craving that the sheriff's *décret* of the 28th August, adjudging the property to him, should be annulled, and the sale declared to be void; or, otherwise, that he should be relieved of his obligation to pay the purchase money. The respondent Company, as judgment creditors, opposed the application; and, on the 4th October, 1882, they presented a petition for *folle enchère* to the Superior Court, demanding the issue of a *bref de venditioni exponas*, under which the property should be resold at the risk of the appellant. In support of his application to annul the sale, the appellant alleged that he had bought the property free of all claims; that the action taken by the customs' authorities had made it impossible for the sheriff to give delivery to him in terms of the contract of sale; and that he could not obtain possession of the machinery without paying the duties claimed by the Crown, which he was under no obligation to do. On the other hand, the respondent Company alleged that the Crown had, in point of fact, no right to detain the machinery in order to enforce payment of the customs duties. They also denied that the appellant had demanded from the sheriff delivery of the property which he had purchased, and averred that the appellant had never been willing or ready to pay the price, that nothing had occurred which made it impossible for the sheriff to give delivery, and that he had, all along, been ready and willing to do so.

Mr. Justice Torrance, on the 29th December, 1882, disposed of both petitions. He held that the sheriff's sale on the 28th August had purged all privileges and hypothèques upon the property, and that the claim of the Government for customs duties could not interfere with its delivery. Being thus of opinion that no cause had been shown why the appellant Prévost "should not have "possession on paying the price of adjudica-"tion," the learned Judge dismissed his application, with costs, and gave the respondents decree in terms of the prayer of their petition.

Against that judgment Mons. Prévost appealed to the Court of Queen's Bench for Lower Canada. Before the cause was heard, the Attorney-General intervened in the interest of the Crown, and prayed the Court to declare that the machinery at the time of its seizure by the sheriff was in the possession of the customs authorities, and not of the judgment debtors, and to adjudge and declare that its seizure by the Crown under the *bref d'assistance* was valid, and that the machinery was in the lawful possession of the Crown for the purpose of holding the same until the duties exigible thereon were paid.

After hearing the original parties to these petitions, and also the intervenor, for their several interests, the Court of Queen's Bench gave judgment upon the 23rd January, 1883.

They held that the Crown was a preferable creditor for the amount of the customs duties payable in respect of the machinery, and, although they were of opinion that there was no error in the judgment of Mr. Justice Torrance, they varied his judgment by directing that the resale at the risk of the appellant should be "sujette au privilége de la Cour-"onne sur les deniers qui representeront le "prix des dites machines." They likewise altered the judgment of the Superior Court, in so far as it related to costs, and recommended, or, in other words, ordered that the whole costs incurred by the appellant Prévost and by the respondent Company in both Courts should be paid by the Crown, and should form a preferable charge upon that part of the price which was payable to the Crown in respect of customs duties.

The reasons for the judgment of the Court of Queen's Bench were delivered by Chief Justice Dorion, and are, in substance, the same as the considerations expressed in the judgment of Mr. Justice Torrance. The learned Judges seem to have been unanimously of opinion that the sheriff's sale had the effect of purging the machinery of all charges, including the rights of the Crown, and that, as soon as the adjudication to the appellant Prévost was completed, on the 28th August 1882, the Crown could only prefer a claim to be ranked in the distribution of the price. Accordingly, they came to the conclusion which is thus stated by the learned Chief Justice:—"La vente, en ce qui regarde "l'appelant, est donc valable, et aussitôt qu'il "aura payé son prix d'adjudication il pourra "se faire mettre en possession des propriétés "adjugées; et en refusant de payer son prix, "il s'expose à ce que la propriété soit vendue "à sa folle enchere, en vertu de l'Art. 600, C. "P. C." The reason assigned for their somewhat remarkable order as to costs was, that the Crown had occasioned the litigation by not intervening at an earlier stage of the proceedings.

Their Lordships are of opinion that neither the judgment of the Queen's Bench, nor that of the Superior Court, which was thereby affirmed, with variations, can be sustained. Both judgments are based upon the ground that, because the seizure by the Crown upon the 29th of August, and the subsequent detention of the machinery until payment should be made of the customs duties, were, in the opinion of the learned Judges, contrary to law, therefore it was in the power of the appellant Prévost, upon payment of the *prix d'adjudication*, to put himself in possession of the property sold to him. That is a very startling proposition. The Crown made the seizure of the machinery, and kept possession of it, in virtue of a warrant *ex facie* regular; and in this appeal, as well as before the Court of Queen's Bench, the Attorney General for the Dominion has appeared and pleaded that the Crown acted within its legal right in seizing and detaining the machinery until customs duties to an amount exceeding $20,000 were paid. The claim of the Crown might or might not be well founded, but nothing in the present case is more clearly apparent than the fact that the claim was deliberately preferred, and has been seriously insisted in, and that the appellant Prévost if he had in September 1882 paid the price of $76,000 to the sheriff, could not have obtained possession of the property which he had purchased, except by paying some $20,000 more which he was not bound to do, or by entering into a doubtful and, it might be, protracted litigation with the Crown. The practical result of the judgments in the Courts below is to relieve the seller of any obligation to give delivery of the subjects sold, and to impose upon the purchaser an obligation to pay the price, and thereafter to attain possession, in the best way he can, it may be, after expensive litigation, and years after he has parted with the purchase money. It appears to their Lordships that such a result is inconsistent with the essential principles of the contract of sale, and is not justified by any peculiarity of the Canadian law.

Art. 1591, C.C., declares that, whilst the rules concerning the formalities and proceedings in judicial sales are to be found in the Civil Procedure code, such sales "are subject "to the rules generally applicable to the con-"tract of sale, when these are not inconsistent "with special laws or any article of this "Code." By Art. 1491, C.C., the principal obligations of the seller, arising out of the contract of sale, are defined to be, "1, the

"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

the absence of special circumstances, be removed by him, at his own expense, and not by the seller.

Their Lordships do not consider it necessary, for the purposes of this case, to decide any of the questions which have been argued before them, in regard to the right of the Crown, either at common law, or under the provisions of the Dominion Act, 40 Vict., c. 10, to seize and retain possession of the machinery in question. It appears to their Lordships to be quite sufficient for the decision of the case between the original parties to it, that no offer has been made to implement the sale of the 28th August 1882, by delivering possession to the purchaser; and that, in point of fact, neither the sheriff nor the respondents have ever been in a position enabling them to give delivery to the appellant, in terms of Articles 1491, 1492, and 1493 of the Civil Code.

Accordingly their Lordships will humbly advise Her Majesty to reverse the judgment of the Superior Court, dated the 29th December 1882, and also the judgment of the Court of Queen's Bench dated the 23rd January 1883, and to grant the prayer of the appellant's petition to have it declared that he is freed from his obligation to pay the purchase money, and to dismiss the petition of the respondents for *folle enchère*, with costs to be paid by the respondents to the appellant of all the proceedings in both Courts, the respondents must also pay to the appellant his costs of this appeal. There will be no order as to the costs of the Crown.

McLeod Fullárton, counsel for Prévost in England.

Lacoste, Globensky, Bisaillon & Brosseau, attorneys for Prévost.

Sir Farrar Herschell, Q.C., and *Mr. Jeune*, in England, and

L. R. Church, Q.C., in Canada for Attorney General.

Lumley Smith, Q.C., and *Percy Gye*, counsel in England, and

J. L. Archambault, counsel in Canada for la Compagnie de Fives-Lille.

RECENT U.S. DECISIONS.

Railway—Negligence to Allow Combustible Materials to Accumulate etc.—Negligence may be imputed to a defendant railway company by a jury from evidence that combustible materials have been allowed to accumulate and remain upon its land, liable to be ignited by sparks from its engines, and to communicate fire to property upon adjoining lands. Evidence considered, and *held* sufficient to support the verdict. Dickinson, J., dissenting. In the opinion of the court by Vanderburgh, J., it is said that there was evidence tending to show that the defendant had allowed combustible materials to accumulate upon its right of way. "The evidence," he observed, "also shows that just before the fire broke out volumes of sparks were observed to escape from the smoke-stack of the engine; and on the part of the defendant it was shown that sparks are liable to escape more or less in the ordinary use of engines, though not out of repair or carelessly managed. If, therefore, combustible materials were allowed to remain upon defendant's land, liable, under the circumstances, to take and communicate fire to the adjacent meadows, from sparks escaping in the ordinary running of trains on the road, the jury might be warranted in imputing negligence to the defendant on this ground. *Kellogg* v. *Railway Co.*, 26 Wis. 223; *Railway* v. *Jones*, 44 Amer. Rep. 337. That plaintiffs had not taken precaution to prevent fire from communicating from the meadow to their stacks was not negligence *per se* on their part. *Karsen* v. *Railway Co.*, 29 Minn. 17; S. C., 11 N. W. Rep. 122." *Clarke* v. *Chicago, etc. R. Co.*, S. C. Minn., May 12, 1885; 23 N. W. Repr. 536.

GENERAL NOTES.

PILGRIM LAWYERS.—Mr. Vernon Lushington, Q.C., Mr. Bridges, and other members of the legal and medical professions, with a party of about 70, are making a pilgrimage to the home of Shakespeare. On Sunday the party visited Anne Hathaway's cottage, and there sang a number of Shakespearean glees in the garden. In the evening a concert of Shakespeare's songs, with Locke's music to 'Macbeth,' was given. The mayor of Stratford-on-Avon entertained the party, and under his guidance, visits were made to the poet's birthplace, and tomb in the church.—*Law Journal* (London), Aug. 8.