THE MONTREAL LOAN AND MORTGAGE COMPANY. } .....APPELLANTS; 1879

AND *June 9, 10. Dec. 13.

P. A. FAUTEUX *et al*..... . ...RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Sheriff's Sale—Procès-Verbal, what it should contain—Art. 638 *C.C.P.*

Under a writ of *venditioni exponas*, issued in a suit wherein *M. C.* was plaintiff and *D. G.* was defendant, the latter's property was seized, advertized and sold to the appellants, under the follow-

*PRESENT:—Ritchie, C. J., and Strong, Fournier, Henry, Taschereau and Gwynne, J. J.

(1) 37 Vict., ch. 10, sect. 30.

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ing description:—"4 lots of land or *emplacements* situate at *Coteau St. Louis*, in the Parish of *l'Enfant Jesus*, heretofore forming part of the Parish of *Montreal*, in the District of *Montreal*, being known and designated in the official plan and book of reference of the Village of *Coteau St. Louis*, in the said Parish of *Montreal*, under the Nos. 18, 19, 20 and 21, of the sub-division of No. 167, of the said official plan and book of reference, with 4 wooden houses and dependencies thereon erected." The sale was made in one lot only, at the Sheriff's office, in the City of *Montreal*. The respondents demanded the nullity of the sale by means of an opposition.

Held,—That it was not sufficient to give only the number of the official plan and book of reference in the *procès-verbal* of seizure and the advertisement of the Sheriff, as under Art. 638, C. C. P. it is necessary to give the range or the street where the property is situated, in addition to the official number, and therefore the sale was null and of no effect.

[As to sale having been made at the Sheriff's office instead of at the church door of the Parish of *l'Enfant Jesus*, see 42 and 43 *Vic.* ch. 25, *Q.*]

APPEAL from a judgment of the Court of Queen's Bench for *Lower Canada* (appeal side), rendered at *Montreal* on the 21st December, 1878, which reversed the judgment of the Superior Court of 29th November, 1877, rendered in favor of the appellants, and annulled and set aside a purchase, made by the appellants, of certain real property from the Sheriff of *Montreal*.

The Sheriff of the District of *Montreal*, on the 5th December, 1876, under a writ of *venditioni exponas* issued in a suit wherein *Moïse Courtemanche* was plaintiff, and *David Gauthier* was defendant, seized, advertized and sold under the following description: "4 lots of land or *emplacements* situate at *Coteau St. Louis*, in the parish of *l'Enfant Jésus*, heretofore forming part of the parish of *Montreal*, in the district of *Montreal*, being known and designated in the official plan and book of reference of the village of *Coteau St. Louis*, in the said parish of *Montreal*, under the Nos. 18, 19, 20 and 21 of the sub-division of No. 167 of the said official plan and book of

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reference, with 4 wooden houses and dependencies thereon erected."

The sale was made in one lot only, at the Sheriff's office, in the City of *Montreal*, and the appellants were the purchasers, *adjudicataires*, for the sum of $450.

The respondents, hypothecary creditors of the defendant, *David Gauthier*, demanded, by opposition, that the sale in question be annulled on four grounds:—

1st. That there was no interpellation to the defendant to designate his real estate, and in consequence that there had been a seizure made *en bloc* of what ought to have been seized in separate lots; 2nd. The omission to mention the requirements of par. 3 of art. 638, C. C. P., the concession, the range or the street; 3rd. That these alleged irregularities were repeated in the official notices published by the Sheriff; 4th. That the sale took place at the Sheriff's office contrary to law, inasmuch as the property was not in the city or *banlieue* of *Montreal*, and ought to have been sold at the church door of the parish where they were situated.

The Court of Queen's Bench (appeal side) reversed the judgment of the Superior Court and declared the sale null and of no effect, on the ground that, as the property was situated in the parish of *l'Enfant Jésus*, a parish duly erected for all civil purposes, the property could only be sold at the church door of the said parish of *l'Enfant Jésus*, but the Supreme Court of *Canada* did not express any opinion on this point, as there was another reason sufficient to declare the sale null and void, and as this point had since been settled by legislation (1).

The evidence bearing upon the case sufficiently appears in the judgments hereinafter given.

Mr. *Laflamme* Q. C., and Mr. *Loranger* Q. C., for Appellants:—

(1) 42 and 43 Vic. ch. 25 *Q.*

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The appellants submit that the property was rightly sold at the Sheriff's office in *Montreal*. The judgment appealed from is based exclusively upon the Sheriff having sold the property in question at the wrong place. If this decision is a sound one, hundreds of other Sheriff's titles, besides appellant's, will be invalid, as sales of property situate in the city and *banlieue* of *Montreal* have always been advertized to take place, and been held, at the Sheriff's office in *Montreal*, both before and after the subdivision of that parish.

The learned counsel entered into a lengthy and elaborate argument to show that the *banlieue* of *Montreal* was recognized by legislative anthority, although no edict or law creating it can be found, and referred to a number of authorities, but as this point has since been settled by legislation and the judgment of the Supreme Court decided the case on other grounds, no further reference to this branch of the argument need be made.

The Court below was unwilling to reverse the judgment of the Superior Court on any of the other grounds taken. These grounds of nullity are three in number viz:

1st.—As to several lots being sold *en bloc*, there is no law requiring them to be sold separately, or forbidding the sale *en bloc*. On the contrary, the Code distinctly contemplates several lots being sold together by the Sheriff for one and the same price. *Vide* Art. 735, Code of Procedure. Common sense dictates that there should be no unbending rule.

2nd.—As to no demand of description of property being made by Bailiff on defendant, or refusal by him to give one. The *procès-verbal* of seizure shows that the seizing officer made the demand on defendant for description of his immovable property, at defendant's domicile, speaking to a grown person of his family; and that he

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seized the real estate mentioned in said *procès-verbal* such as described by the defendant, speaking as aforesaid, and after having himself ascertained its correctness on the spot.

Art. 637, Code of Procedure, does not require any personal requisition on the defendant; and the seizing officer fully complied with it. It is evident also that if there had been any non-observance of its requirements, it is only the defendant who could complain of it, not the present appellants, and the defendant could do so by opposition *a fin d'annuler*; but only if the description in the *procès-verbal* was inexact. *Vide Dupuis vs. Bourdages and Bourdages* opposants (1).

3rd.—As to there being no indication of street range or concession. The description is in accordance with Act 2168 of the Civil Code. The *Coteau St. Louis* is given, the parish and the cadastral numbers of the lots, which Art 2168 declares to be the true description and sufficient *in any document whatever*. It is also specially stated that the Sheriff shall so describe immoveables in his notices of sale. If appellants had fyled an opposition on the ground that the property was on a street and that it ought to be so described, they would be required to allege and prove the fact. Now, they have not alleged the lots to be upon any street, nor have they produced any evidence proving it.

There is no allegation as to the lots being on Robin Street or any street; and the only witness who speaks as to their situation is the defendant, *David Gauthier*, who states that the lots are upon Robin Street, *Coteau St. Louis*, parish of *L'Enfant Jésus*, and that there is a sign board with the name of the street, and that it is known by that name, and in the village of *Coteau St. Louis*.

This is altogether insufficient evidence to prove the existence of a legal street, such as the Sheriff would be

(1). 4 L. C. R. 227.

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justified in stating the lots seized to be situated upon. Respondents prove the village to be incorporated, and should have produced the proper municipal officer to prove that Robin Street was a duly homologated legal street acquired by the corporation and paid for, otherwise the Sheriff would expose himself to a demand by the purchasers to set aside the *décret*, or for a reduction in price, if the "street" proved to be merely one of sufferance, or a projected one (of which there are many in *Montreal*) the ownership of which was in private hands, and which the corporation would have at some future time to acquire and assess the costs upon those interested; no one in the meanwhile being responsible for repairs, drainage, etc. There is documentary evidence in the record which goes to establish that this so-called street was in fact private property. In the deed of sale from respondents to defendant the lots in question are described as sub-division numbers of official No. 167 of *Cote St. Louis* and fronting on Robin Street, which is itself described, in parenthesis, thus "(No. 52 du No. 167)." Now, the fact that this "Robin Street" had a cadastral number proves that it was not a road or street in the eye of the law, but private property, cadastral numbers not being given to public streets. *Vide* 35 Vict., c. 16, sec. 2 *Q*.

The Code of Procedure does not set aside Sheriff's sales for informalities in the seizure which could be set up by opposition; on the contrary, it says that non-observance of the essential formalities prescribed for *the sale* shall have that effect; these formalities are set forth at length in Art. 665 to 689 C. C. P., and a violation of these, in some essential part, would be good ground for setting aside the sale, there being no other remedy open to the party aggrieved, as, of course, no opposition could then be fyled.

So far from these being grounds which could be set

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up after a Sheriff's sale in order to set it aside, it has been held that an opposition setting up such grounds should be fyled to the *first execution* under writ of *fieri facias*, and would be too late if opposed to the sale under the *venditioni exponas; vide Abbott vs. The Montreal and Bytown Railway Company* (1). *A fortiori*, it would be too late after the sale: *Berthelet vs. Guy* (2).

Mr. *Doutre*, Q. C., for respondents—after arguing that the sale was properly made at the Sheriff's office in the City of *Montreal*, continued as follows:

The other grounds of opposition on which the respondents rely also are:

(1). These four lots, bearing each a separate cadastral number, 18, 19, 20 and 21 of the subdivision of No. 167, were four different immovables and should have been sold separately. The law is not so precise on this point as it is on the other; but it ought to be interpreted, and, as a matter of fact, it has generally been interpreted, in a common sense way, in the interest of all parties, which consists in obtaining the most possible from judicial sales,—the plaintiff and other creditors in getting paid, the defendant in being released of his indebtedness. In the audience, at a sheriff 's sale, there may be a number of persons capable of purchasing a house and lot and unable to buy four. The fact proved, that these houses were under one roof, in order to justify the sale of four houses in one lot, cannot go far to justify the very unusual proceeding of selling four houses in one lot. In every large city or town, there are terraces, containing fifteen or twenty houses, apparently under a continuous roof, but belonging to different owners.

The reason why they were sold in one lot, is given by the Sheriff's officer who made the sale, Mr. *Vilbon*, as follows: "Before putting up the property for sale, the defendant requested me to sell it by lots, and Mr.

(1) 1 L. C. Jur. 1. (2) 8 L. C. R. 299.

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Arthur Desjardins, who was the attorney *ad litem* for the plaintiff, objected to this; I then referred the matter to the Sheriff and to the Deputy Sheriff, and these gentlemen decided that the property should be sold *en bloc*; they consulted Mr. *Lacoste*, who was there, and they decided that the sale should be made in one lot only. Now we find that the property was adjudged to the same Mr. *Arthur Desjardins*, for the appellants, for the sum of $450!

Article 2167 of the Civil Code says:—Each lot of land shewn upon the plan is designated thereon by a number, which is one of a single series, and is entered in the book of reference to designate the same lot. Article 668 of the Code of Civil Procedure says that every bid must indicate, amongst other things, the immovable bid upon. The word "immovable" is in the singular number, implying thereby that one immovable only should be put up to sale at a time.

(2). Then also, contrary to article 638 of the Code of Procedure, section 3, the minutes of seizure did not indicate the street in which the immovables seized were situated. This is answered by art. 2168 of the Civil Code, where it is said that "the number given to a lot upon the plan and in the book of reference is the true description of such lot and is sufficient as such in any document whatever, and any part of such lot is sufficiently designated by stating that it is a part of such lot and mentioning who is the owner thereof and the properties conterminous thereto."

The Civil Code came into force on the 28th June, 1866; the Code of Procedure on the 28th June, 1867. By all the rules of interpretation the last statute prevails over the former one.

Carré & Chauveau (1) say that in these matters, the

(1) Vol. 5, Q. 2229, p. 448.

law must be observed strictly and no latitude of interpretation is admissible.

In the official cadastre of which this Court can take judicial notice, Robin street is well marked and described. The deed of sale which has been fyled in the case mentions the fact that this property is situated on Robin street. The provisions of the law have not been complied with, and it was for the appellants to show by authority that some of the formalities prescribed could be omitted.

Mr. *Laflamme*, Q. C., in reply :—

The evidence clearly establishes that it is usual for the Sheriff to sell *en bloc* an unfinished terrace built on four sub-divided lots. The law gives the Sheriff a discretionary power.

[FOURNIER, J.:—Must not that discretionary power be exercised at the time of the seizure and not at the time of the sale?]

Yes, but the seizure in this case does not specify that the seizure was of four separate lots, but it is specified here in one description as four lots of land.

As to the omission of the name of the street, this objection should have been taken before the sale and, moreover, it will be seen that there is no evidence of the legal existence of a street, and by referring to the amended cadastre, it will be seen that this property is not bounded by the street

FOURNIER, J. :—

Les intimés devant cette Cour, opposants en Cour inférieure, ont demandé la nullité du décret d'un immeuble saisi et vendu à la poursuite de *Moise Courtemanche* contre *Pierre Gauthier*, leur débiteur d'une créance hypothécaire.

Cet immeuble est décrit dans le procès-verbal de

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saisie et dans les annonces de vente faites par le shérif, comme suit :

" Quatre lots de terre ou emplacements situés au Coteau St. Louis en la Paroisse du St. Enfant Jésus, faisant ci-devant partie de la Paroisse de Montréal, dans le District de Montréal, étant connus et désignés aux Plan et Livre de Renvoi officiels du village du Coteau St. Louis de la dite Paroisse de Montréal, sous les numéros dix-huit, dix-neuf, vingt et vingt-et-un de la subdivision du numéro cent soixante-et-sept (167) des dits Plan et Livre de Renvoi officiels— Avec quatre maisons en bois et dépendances sus érigées."

Ces quatre lots ont été vendus comme n'en formant qu'un seul.

Dans leur opposition, les intimés allèguent qu'ils ont sur cette propriété une créance de bailleur de fonds au montant de $3,330.95, et que la vente qui en a été faite est nulle pour les raisons suivantes :

1o. Parce que la saisie des dits immeubles a été faite en violation des dispositions de la loi, lesquelles sont toutes à peine de nullité : § 1. Plusieurs lots de terre ayant été saisis en bloc ; § 2. Le Défendeur n'ayant pas refusé d'indiquer ce qu'il possédait d'immeubles et le Shérif les ayant ainsi saisis en bloc, sans indication ou désignation fournie par le Défendeur, et sans refus de sa part de les indiquer ou désigner (1); § 3. La description des immeubles saisis n'indiquant pas la rue, le rang ou la concession de la paroisse où les dits lots sont déclarés être situés (2).

Les mêmes causes de nullité sont aussi invoquées contre les annonces de la vente et contre la vente elle-même. Ils allèguent en outre que :

§ 1o. Chaque immeuble ou lot de terre devait être vendu séparément (3) ; § 2o. Le Défendeur a formellement requis le Shérif de mettre séparément en vente les dits lots de terre, et cela n'a pas été fait ; § 3o. La mise en vente en bloc constitue le dol et les artifices mentionnés en l'art. 714 du C. P. C. ; § 4o. L'adjudicataire qui a substitué la dite Compagnie " The Montreal Loan and Mortgage Company " à lui-même au bureau du Shérif et après la vente était l'avocat du saisissant, et tout ce qui précède était à sa connaissance.

Les intimés ajoutant de plus, que la conséquence des

(1) Art. 637 C. P. C. (2) Art. 638, § 3, C. P. C.
(3) Art. 668, C. P. C.

procédés ainsi faits en violation de la loi a été de faire vendre la propriété en question à vil prix, et par là de leur faire perdre toute occasion d'être payés de leur prix de vente.

L'appelante a lié contestation par une réponse alléguant que la nullité du décret ne peut être demandée par opposition, mais qu'elle doit l'être par une requête libellée conformément à l'art. 715 du Code de Procédure Civile; elle maintient la légalité de la saisie et des annonces et ajoute que la propriété en question, étant située dans la paroisse du *St. Enfant Jésus* formant autrefois partie de la banlieue de *Montréal*, dont elle a été démembrée, devait être vendue, non à la porte de l'église de cette paroisse, mais au bureau du shérif comme l'ont toujours été, avant et depuis le Code de Procédure, toutes les propriétés situées dans la banlieue de *Montréal*.

Les intimés, comme créanciers hypothécaires du saisi, *Gauthier*, ont indubitablement, en vertu de l'article 714 du Code de Procédure Civile, le droit de demander la nullité du décret. Mais on leur objecte que cette demande ne peut être formée par voie d'opposition, mais qu'elle doit l'être au moyen d'une requête libellée, signifiée à toutes les parties intéressées comme le veut l'article 715 du Code de Procédure Civile. La pièce de procédure que les intimés ont désignée sous le nom d'opposition contient en réalité toutes les allégations d'une requête libellée; elle a aussi été signifiée à toutes les parties intéressées suivant les dispositions de l'article 715. Pour en faire une requête en tout conforme à cet article, il suffirait d'en changer le nom. Les procédures et les actions n'ont point de noms particuliers par lesquels elles doivent être désignées. Il suffit pour leur validité qu'elles contiennent des allégations suffisantes pour justifier l'octroi de leurs conclusions. L'objection faite à la procédure adoptée par l'intimé

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n'est conséquemment pas fondée. La Cour Supérieure et la Cour du Banc de la Reine ont été unanimes à la rejeter.

Une autre objection, basée sur le défaut d'interpellation faite au défendeur de donner une désignation de ses immeubles, ne me paraît pas fondée non plus. Le procès-verbal de saisie constate que l'huissier s'est adressé à une personne raisonnable de la famille du défendeur, et que parlant à cette personne, "il aurait "sommé le défendeur de lui donner une désignation de " ses immeubles." Le défendeur était sans doute absent de chez lui lors de la saisie ; mais son absence ne pouvait aucunement empêcher les huissiers de procéder. La loi n'exigeant pas que cette sommation soit faite personnellement au défendeur, elle peut l'être à son domicile, et il est constaté qu'elle a été faite de cette manière. La vérité de ce fait ne peut être mise en question, car le procès-verbal en fait une preuve authentique qui ne peut être contredite que par la voie de l'inscription de faux à laquelle on n'a pas jugé à propos de recourir. Le défendeur *Gauthier* n'a pas dû d'ailleurs tarder à être informé de cette saisie, et de la sommation qui lui avait été faite, puisqu'un double du procès-verbal contenant cette sommation a été laissé à son domicile. Le paragraphe 4 de l'article 638 du Code de Procédure Civile dit qu'un exemplaire du procès-verbal sera laissé au saisi, personnellement ou à son domicile réel ou légal. On doit donc considérer l'interpellation comme ayant eu lieu suivant la loi.

Quant à la prétention que les quatre lots saisis devaient être vendus séparément, la preuve à cet égard est contradictoire, bien qu'il en ressorte certainement le fait que ces maisons inachevées étaient destinées à faire des habitations séparées les unes des autres ; mais étant d'avis que les Opposants ont raison sur un autre point, et qu'ils doivent obtenir leur conclusion, je me dis-

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penserai d'analyser cette preuve. Je m'abstiendrai aussi de me prononcer sur une question qui a été l'objet de beaucoup de recherches de la part des savants avocats des parties :—c'est celle de savoir si la vente aurait dû être faite à la porte de l'église du *St. Enfant Jésus*, au lieu de l'être au bureau du shérif. La raison de mon abstention est que cette question a été, depuis que cette cause est sous considération, réglée par un statut de la dernière session de la législature de *Québec*. Il est vrai qu'il fait exception des causes alors pendantes.

Il reste maintenant à considérer la question de savoir si la description de l'immeuble donnée par le shérif dans ses annonces de vente est conforme à la loi, et si l'observation des formalités à ce sujet par le Code de Procédure sont à peine de nullité.

L'article 648 du Code de Procédure Civile oblige le shérif à donner dans ses annonces de vente la description de l'immeuble telle qu'insérée au procès-verbal de saisie. D'après l'article 638 la saisie est constatée par un procès-verbal *qui doit contenir* d'après le paragraphe 3 de cet article, " la description des immeubles saisis en indi-" quant la cité, ville, village, paroisse ou township, ainsi " que la rue, le rang ou la concession où il sont situés, et " le numéro de l'immeuble, s'il existe un plan officiel " de la localité, sinon les tenants et aboutissants." Le langage de cet article suffit pour faire voir que les formalités qu'il prescrit sont à peine de nullité. C'est dans la forme impérative que s'exprime le Code, " *la saisie* " *des immeubles est constatée par un procès-verbal qui doit* " *contenir*." Les formalités prescrites ont-elles été observées dans le cas actuel ?

D'abord, quant à la situation, on voit par le procès-verbal que les emplacements en question sont situés au *Coteau St. Louis*, en la paroisse du *St. Enfant Jésus*.— Qu'est-ce que le *Coteau St. Louis* ? est-ce une cité, ville ou village ? Pour le savoir il faut recourir à la preuve,

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L'acte de vente des opposants qui conformement à l'article 1,210, paragraphe 2, fait preuve légale des énonciations qu'il contient, déclare que les lots en question sont

Situés sur la rue Robin (No. 52 du No. 167), en la municipalité de la Côte St. Louis, dans la paroisse de Montréal, connus et désignés comme lots numéros dix-huit, dix-neuf, vingt et vingt-et-un (Nos. 18, 19, 20 et 21) des plan de subdivision et livre de renvoi faits du numéro officiel cent soixante-sept (No. 167) des plan et livre de renvoi du village incorporé de la Côte St. Louis, paroisse de Montréal, et déposés, en conformité à l'article 2175 du code civil du Bas-Canada, contenant environ chaque lot de terre quarante pieds de largeur sur une profondeur de quatre-vingts pieds, plus ou moins, mesure anglaise.

Le député et le premier commis du shérif entendus comme témoins désignent cette localité, l'un sous le nom de "*Côte St. Louis*" et l'autre sous celui de "*Coteau St. Louis.*" Le défendeur entendu comme témoin dit que la propriété est dans les limites du village du *Coteau St. Louis.*

Le doute que peut causer cette preuve sur le véritable nom de la localité est facilement tranché en référant à la proclamation qui l'a érigée en municipalité de village. Cette proclamation, dont nous sommes tenus de prendre judiciairement connaissance, établit que la désignation donnée dans l'acte de vente des opposants est correcte. Dans ce cas il est clair que la localité n'a pas été désignée dans la saisie et les annonces de vente comme le veut l'article 638. On a omis une déclaration essentielle pour faire facilement reconnaître et identifier la propriété—celle que les lots en question étaient situés dans "*le village de la Côte St. Louis,*" nom sous lequel cette localité a été érigée en municipalité de village par proclamation en date du 14 octobre 1846.

Il est aussi en preuve par l'acte de vente que ces lots sont situés sur la rue Robin. Ce fait est aussi prouvé par le témoignage du défendeur et par l'acte de vente. Pas un seul des témoins entendus par l'appelante n'a

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prouvé le contraire. Cette dernière qui avait intérêt à justifier l'omission de la mention du nom de la rue n'a fait aucune tentative à cet effet devant la cour inférieure. Le défaut de transquestions au défendeur, seul témoin qui, à part de l'acte de vente, constate l'existence de cette rue, semble indiquer que l'appelante était satisfaite de la vérité du fait. Ce n'est que devant cette cour qu'elle a essayé de remédier à l'insuffisance de sa preuve à cet égard, en produisant devant cette cour une copie du plan officiel fait en vertu de l'art. 2175, au moyen duquel elle prétend faire la preuve du fait qu'il n'existe pas légalement une rue désignée sous le nom de rue Robin,

Ce n'est pas devant cette cour, en appel, mais devant la Cour Supérieure lorsque cette cause était à l'enquête que cette preuve devait être faite. Il n'est plus temps de la faire ici. Ce serait changer la position des parties devant la cour de première instance et décider la cause sur une preuve différente de celle qui a servi de base au jugement en cette cause.

Il est bien vrai que le plan officiel que l'on offre de produire doit faire une preuve authentique de la description des propriétés,—mais ce n'est pas une preuve de la non existence à l'époque de la saisie d'une rue qui pouvait ne pas exister lors de la confection du cadastre, mais qui peut bien avoir été légalement ouverte depuis. Dans tous les cas, c'est une preuve susceptible d'être contredite par une autre preuve d'égale force, et elle devait pour cette raison être produite comme toute autre preuve en temps et lieu convenable devant la Cour de première instance.

Cette Cour ne peut donc prendre connaissance de cette preuve,—elle doit décider ce point de la cause sur la preuve qui a été faite en cour de première instance et sur laquelle la cause a été décidée.

La preuve faite par l'acte de vente cité plus haut et

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par le témoignage du Défendeur, me paraît suffisante pour prouver l'existence de la rue Robin. Ainsi, il est établi que deux formalités essentielles pour la validité de la saisie et des annonces ont été omises, savoir: celle de la mention du nom du village, et celle du nom de la rue. Quoique la décision de l'Hon. Juge en chef, Sir *A A. Dorion*, ne repose que sur la question de la banlieue, il a cependant exprimé son opinion dans laquelle je concours pleinement, sur l'effet de l'omission de ces formalités. Je ne peux mieux faire que de la citer textuellement:

L'article 638 du Code de Procédure veut que la saisie des immeubles soit constatée par un procès-verbal qui doit contenir, entre autres choses: " La description des immeubles saisie, en indiquant " la cité, ville, village, paroisse ou township, *ainsi que la rue, le* " *rang ou la concession où ils sont situés, et le numéro de l'immeuble,* " *s'il existe un plan officiel de la localité, sinon les tenants et abou-* " *tissants.*" Les plans officiels auxquels réfère cet article sont ceux mentionnés dans l'article 2168 du Code Civil. Il n'y en a pas d'autres qui soient reconnus comme tels, et quoique ce dernier article porte que lorsque ces plans auront été déposés et qu'avis en aura été donné, le numéro de chaque lot indiqué à ces plans et au livre de renvoi correspondant, sera la vraie description de ce lot et *suffira dans tout document quelconque,* cela ne peut s'appliquer que lorsque la loi n'exige pas d'une manière expresse une plus ample désignation.

Le Code de Procédure, qui n'est devenu en force qu'après le Code Civil, a dérogé à l'article 2168, en exigeant que le procès-verbal de saisie et les annonces du shérif indiquent le nom des rues où sont situés les immeubles saisis et le numéro du plan officiel, ou les tenants et aboutissants, s'il n'y a pas de plan officiel. Il semble donc qu'il ne suffit pas de donner le numéro seul du plan officiel, il y a d'excellentes raisons pour cela. Ce que la loi veut, c'est que les intéressés soient informés que les immeubles sur lesquels ils ont des droits ou des réclamations ont été saisis et doivent être vendus par le shérif. La désignation par le numéro de l'immeuble, qui dans un contrat de vente ou d'échange serait suffisante, parce que les parties connaissent ce qui fait l'objet de leur transaction, ne l'est pas toujours pour porter à la connaissance des tiers la situation exacte d'immeubles saisis. C'est, sans doute, pour cela, que le Code de Procédure Civile exige que l'on donne le rang ou la rue où est situé l'immeuble saisi, outre son numéro, qui n'est là que pour remplacer

les tenants et aboutissants, qui sont encore requis lorsqu'il n'y a pas de plan officiel.

Pour ces motifs je suis d'opinion que le jugement de la Cour du Banc de la Reine de la province de *Québec* doit être confirmé avec dépens.

THE CHIEF JUSTICE concurred.

STRONG, J. :—

I concur in the judgment of my brother *Fournier*, and also in that of my brother *Taschereau*, so far as it holds the Sheriff's sale void for the insufficiency of the advertisement; but I cannot agree that the sale is null on the ground of fraud and artifice.

HENRY, J. :—

The sale of the lands in question in this case is contested, and sought to be set aside by the opposants on several grounds.

1st,—that the sale should have taken place at the door of the Chapel of the Parish of *L'enfant Jésus*, and not at the Sheriff's office in the city of *Montreal*. 2nd,—that the sale *en bloc* of four separate and distinct houses, although one tenement, was illegal under art. 637 C. C. P. 3nd,—that in the notice of sale the description of the property seized did not indicate the street, range, concession, or parish, where the lots were alleged to be situated, as required by art. 638, sec. 3, C. C. P.

After what has already been said by my learned brother *Fournier*, and the views I entertain as to the third objection, I do not consider it necessary to refer particularly to the two preceding ones.

In reference to the first I may say, however, that although the existence of the *banlieue* may have been sufficiently shewn, it may be, that when the parish before mentioned was established, any portion of the *banlieue* included within the boundaries of the parish

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would be effectually separated from the city of *Montreal* for all purposes. In that case the sale, I think, should have taken place at the chapel door of the parish. As I did not intend to found my judgment on either that point or on the second objection, I do not consider it necessary to decide it. The Legislature having, since the proceedings herein were commenced, validated all such sales except those then in litigation, our judgment on the point is not necessary.

I think, however, the sale was irregular and void because of what I consider a defective notice. The terms of the Code seem to me to the last degree imperative. It requires that the street which the lands adjoin shall be designated in the notice, which was not done, and I think the evidence is sufficient to show the legal existence of the street upon the side of which the lots in question are situated. It was named long before the sale, and the name of it was indicated on a sign board stuck up on it.

I therefore concur in the conclusion that the appeal herein should be dismissed and the judgment appealed from affirmed with costs.

TASCHEREAU J. :—

In a case of *Courtemanche vs. Gauthier*, the plaintiff, having obtained judgment against the defendant, seized the latter's immovable property, and caused it to be sold by the sheriff. The Montreal loan Company were the highest bidders at this sale, and the property was adjudged to them. A third party, *Fauteux*, who was a creditor of *Gauthier*, the defendant, and who had a mortgage on the immovable property so sold by the Sheriff, by an opposition demands that the said sale to the Montreal Loan Company by the Sheriff be set aside and annulled, upon, amongst others, the following grounds :—

1st. Because this seizure in the said case and sale was of several lots *en bloc*, the opposant

alleging that the selling *en bloc* constitutes fraud within the terms of Art 714 of the Code of Procedure, because the property was adjudged to a Mr. *Desjardins*, who was the plaintiff's attorney at the sale and bought the said property for and in the name of the said Montreal Loan Company, the said *Desjardins* having the said sale made *en bloc*, so as to get the property for the said company at a price far under its value, in consequence whereof the opposant, *Fauteux*, got nothing from the proceeds of the sale, and lost the amount of his mortgage. I will consider immediately this part of the case.

The Montreal Loan Company joined issue with the opposant and fyled pleas, equivalent to a general denegation, to this ground of the opposition. Of the fact, that *Desjardins* was the bidder at the sheriff's sale, and only substituted the Montreal Loan Company's name as *adjudicataires* after the sale, there seems to me to be ample proof in the record, though in the factum, the appellants, the said Montreal Loan Company not only deny it, but state that the sheriff's *procès-verbal* of sale establishes the contrary. Now, this is an error. It appears by the minutes of the biddings at the sale, returned by the Sheriff with his *procès-verbal*, that *Desjardins* bid twice in his own name, and that it was only at the the last bid that he gave the company's name, whereupon the adjudication was made to the company. As to the fact that *Desjardins* was also the attorney of the plaintiff in the case, it is established by the sheriff's officer who made the sale So much for these two facts.

I will now consider the points raised by the appellants on this ground of the opposition. They contend, first, that the respondent should have fyled an opposition to stop the sale, and that they cannot be allowed now to ask that the sale be set aside for the reasons by him given. Well, it must be remarked, that here the

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respondent attacks the sale, because the sale itself was irregularly made *en bloc*. Now, could he, before the sale, complain of the sale itself and of the manner in which it was made? How could he know before the sale, that each lot would not be put up separately? Though the seizure had been made *en bloc*, could not the Sheriff put up each lot separately? Then, though the judgment debtor himself is deemed to have acquiesced in the proceedings, if he did not complain by an opposition before the sale, within the delay fixed by law, this does not apply to third persons, who were not parties to the record; and not a single authority has been cited at the hearing applying to third parties the rule which binds the judgment debtor in such a case.

The appellants further contend, and this seems to be the ground upon which they insist the most, that this property could not be sold separately, because it was an undivided building. They have examined three witnesses as to this fact, *Rielle*, *Decary* and *Bélair*, whilst the respondent has also brought three, *Gauthier*, *Généreux* and *Trudelle*. A careful perusal of the evidence on this point has left no doubt whatever in my mind that the defendant's property consisted of four houses built on four separate official lots. *Gauthier* the defendant, who built them, says so positively, *Généreux*, a contractor and inspector of buildings, who specially inspected this property for another Loan Company, says, that these houses were built to be separate houses, that each house was forty feet and corresponded with each of the lots, which by the deed of sale are forty feet each. *Trudelle*, another inspector of buildings, and who also examined this property for a loan company, swears positively that these houses could be sold separately. So much for the respondents witnesses.

Now, when I come to the appellants witnesses, I see that *Rielle*, a provincial land surveyor, *thinks*

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that this block was to form only one building, but he is contradicted here by the man who built it, and being cross-examined, to the question, "Were these houses built to be sold separately, "so that each purchaser knew what he was buying?" he answers, "It is possible." This witness corroborates, in fact, the respondent's proof. *Decary* gives a description of the property when the houses were building, and were in an unfinished state, and does not think that they were to be sold separately, yet, he cannot swear that such a sale was impossible. And *Belair*, the appellant's third witness as to this fact, on cross-examination, positively says that it would have been easier to sell this property, house by house, contradicting all that he had said before on the subject. When I take into consideration, that one of the respondent's witnesses to establish that there were four separate houses on four different lots is the man himself who built them, and that the two others are inspectors of buildings, who, as such, examined this property for loan companies, and when I consider that these last three witnesses gave such positive, clear and logical testimony, and are uncontradicted to any extent, I am bound to place full reliance on it.

Now, as to the facts upon which the respondent relies to urge that this selling *en bloc* was a fraud or artifice employed, with the knowledge of the purchaser, to keep persons from bidding (1), they are briefly as follows. It is established, and to my mind conclusively proved: 1st. That *Desjardins* was the attorney of the plaintiff, who had the property sold and seized. 2nd. That he bought the property for the appellants, the Montreal Loan Company, at the Sheriff's sale, and that the said company were not creditors of the defendant, and had no mortgage or interest

(1) Art. 714 C. C. P.

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on the said property. 3rd. That a few minutes before this sale the defendant asked that his property should be put up and sold lot by lot, separately, and not *en bloc*. 4th. That *Desjardins*, who was there, as was then supposed, as the plaintiff's attorney, and to direct and watch the proceedings as such, positively refused this demand of the defendant, and ordered the Sheriff's officer to make the sale *en bloc*, which was so done. 5th. That this property was then sold to the Montreal Loan Company, the same *Desjardins* bidding for them, for the sum of four hundred and fifty dollars. 6th. That these lots, with the buildings thereon, were worth from four to six thousand dollars. 7th. That had each lot, with each house thereon, been put up separately, they would have been certainly sold at a higher figure.

Now, what it the reasonable inference from these facts? To me it seems clear that, if this property, worth at least four thousand dollars, was bought by the appellants for four hundred and fifty dollars, it is by the contrivance and device of *Desjardins*, their agent, and whose acts are their acts, in having this property sold in one lot, and so keeping from bidding other parties who, however desirous they may have been of buying one house and one lot, would not and could not think of buying four houses and four lots. I say, then, to use the terms of art. 714 of the Code of Civil Procedure, that, at this sale, with the knowledge of the purchasers, or of their agent, fraud and artifice were employed to keep persons from bidding, and that such being the case, the respondents, being creditors and interested persons, are entitled to have the said sale vacated. Such being the conclusion I have come to upon this ground of the opposition, I might perhaps refrain from going into the other parts of the case, since, whatever views I may take upon them, it cannot affect the result that the appeal must be dismissed, in my opinion.

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I will, however, say a few words about the ground taken by the respondent in his opposition, as to the insufficiency of the Sheriff's description of the property to be sold, in not indicating the street on which the property was situated. On this, Art. 638 of the Code of Procedure is positive. The seizure of immovables is recorded by minutes which must contain * * * a description of the immovables seized, indicating the city, town, village, parish or township, as well as the street, range, or concession in which they are situated. In the case submitted, the street, range, or concession is not given. That there is a street seems to be denied by the appellants, but I find ample evidence of it. 1st. In the deed of sale to the defendant of this property, where the property is sold as situated on *Robin* street. 2nd. In the deposition of *Gauthier*, who swears that it is situated on *Robin* street, that this street is known as *Robin* street, and is so marked as streets are usually marked. Now, in the absence of contrary evidence, this seems to me to establish clearly, that such property is situated on *Robin* street. And not a tittle of evidence to the contrary is to be found in the record. At the hearing before this court the appellants have fyled certain plans, in which they desire us to find the proof, either that no *Robin* street exists, or that this property is not situated on *Robin* street. Surely no additional proof can be made before this court. This evidence was not given before the lower court, and it therefore cannot be received here, in my opinion, and I cannot look at it. The appellants have also denied the respondents' right in law, to invoke now such a ground of nullity against the sale. I can only repeat here what I have said on the same objection, when taken to the ground of the seizure *en bloc*. It is the judgment debtor which the cases cited have held to be bound to invoke such nullities by opposition *afin d'annuler* before the sale, not third parties

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out of the record. These third parties are not bound to act till they are aggrieved; even if they are aware, before the sale, of such grounds of nullity, they are not obliged then to invoke them. It may be, that the sale will bring a sum sufficient to satisfy their claim, and they can wait till such sale takes place. It is quite time enough for them to move, when they find that they suffer. The law would be hard if it obliged them to do so, when they cannot tell whether their interests will be affected or not by the result of the sale. I even doubt if they could stop the sale by an opposition *afin d'annuler* upon such a ground. Art. 657 grants them that right if they have an actual interest in the seizure and sale. How can they be said to have an actual interest, before they are aggrieved? It is true that in *Berthelet* vs. *Guy* (1) third parties seem to have been allowed to fyle such an opposition, but I remark that they were *cessionnaires* of the defendant, also that this point of law was not raised, and moreover, by the judgment of the Superior Court, that they specially alleged that the property, in which they were interested, would bring a higher price, if the irregularities they complained of were remedied. I may also state, that in the Province *Quebec* oppositions *afin d'annuler*, for informalities in the seizure, by any other than the party whose property has been seized, are not often met with. However, it is unnecessary for me here to decide whether third parties interested have the right to fyle such oppositions upon such grounds. All that I say is, that they are not bound to do so to protect their rights, that they may wait till the sale, and then ask its nullity if they suffer from it.

Is this a fatal irregularity? is the next question. I hold that it is so. The minutes of the seizure of an immovable property must contain the description

(1) 8 L. C. R. 299.

of such property, as indicated and ordered by art. 638 of the Code of Procedure, which is imperative in its terms. Sheriffs are bound to follow strictly the formalities required for the seizure and sale of property, and the court cannot sanction a relaxation of the stringent rules laid down by the law in such matters. If, in one case, the omission of the street was declared to be of no consequence, there is not one of the details required by art. 638 which could not be so declared, upon such a precedent. Sales by which the rights of third parties are swept away must be made in that way, and in that way alone, in which the law has ordered them to be made. Upon this principle, the tribunals of the Province of *Quebec* constantly maintain oppositions *afin d'annuler* by defendants, based upon the want of some of the formalities required by the said article 638. The nullities that a defendant can invoke by an opposition *afin d'annuler*, third parties interested can invoke by a demand *en nullité de décret*, and I think, in the present case, that this point is well taken by the respondent in his opposition.

The judgment appealed from has annulled the Sheriff's sale and I am of opinion that the said judgment is right, and that this appeal must be dismissed.

Another reason urged by the respondent against this sale, and the only reason upon which the Court of Queen's Bench has vacated it, is, that the sale took place at the Sheriff's office, instead of at the door of the parish church where the property lies. Since the judgment of the Court of Queen's Bench, and in fact since the case was heard before us, the *Quebec* Legislature has passed a statute by which all doubts upon this question are removed, and all Sheriff's sales so made are declared good and valid. So, though pending cases are not affected by this statute, by a special provision thereof, I deem it unnecessary to consider a question

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upon which the conclusion I might arrive at could not affect my judgment in this case, and which is now of no public importance whatsoever.

GWYNNE, J.:—

I had prepared a short judgment in this case, but having had the opportunity of considering the case in deliberation with my brother *Taschereau*, I adopt his judgment without reserve.

Appeal dismissed with costs.

Attorney for appellants: *G. B. Cramp.*

Attorney for respondents: *Doutre, Branchaud & McCord.*

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*Jan. 28, 29.
*May 9.

ALEXANDER McKAY.....APPELLANT;

AND

CHARLES SEYMOUR CRYSLER.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Sale of land for taxes—32 *Vic.*, *c.* 36, *sec.* 155 *O.*—*Proof of taxes in arrear.*

In a suit commenced by a bill in the Court of Chancery asking for an account of damages sustained by certain trespasses alleged to have been committed by the appellant (defendant) for an injunction and for possession, the principal question raised was whether a sale of the land for taxes, which took place on the 1st March, 1856, through and under which the respondent (plaintiff) claimed title, was valid. The evidence is fully set out below.

Held,—That there was no evidence to shew the land sold had been properly assessed, and, therefore, the sale of the land in question was invalid. [*Strong* and *Gwynne*, J. J., dissenting.]

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*PRESENT.—Ritchie, C. J., and Strong, Fournier, Henry and Gwynne, J. J.