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 \* Mar. 8.  
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THE CONNECTICUT & PASSUMPSIC RIVERS RAILROAD CO. (PETITIONERS EN NULLITÉ DE DECRET)..... } APPELLANTS;

AND

JOHN L. MORRIS (ADJUDICATAIRE)..... RESPONDENT.  
 ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
 LOWER CANADA (APPEAL SIDE).

*Execution—Sale of railway shares en bloc—Arts. 595, 599 C. C. P.*

Where a number of shares of railway stock were seized and advertised to be sold in one lot, neither the defendant nor any one interested in the sale requesting the sheriff to sell the shares separately, and such shares were sold for an amount far in excess of the judgment debt for which the property was taken

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\* PRESENT—Sir W. J. Ritchie C. J. and Strong, Fournier, Henry and Taschereau JJ.

into execution, such sale in the absence of proof of fraud or collusion was held good and valid.

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APPEAL from the judgment of the Court of Queen's Bench for Lower Canada (appeal side) (1) reversing the judgment of the Superior Court maintaining a petition *en nullité de décret*.

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& PASSUMP-  
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This was a petition *en nullité de décret* by the appellants, creditors of one Barlow, defendant, to set aside a sheriff's sale of a number of shares in the Montreal, Portland, & Boston Railway Company seized as belonging to him. The seizure was made by execution issued in the suit of *O'Halloran v. Barlow* to levy \$1,002.52, interest and costs, and 7,924 paid up shares of the par value of \$100 each were seized and sold *en bloc* to respondent for \$12,010. This sum was at once paid to the bailiff, who the same day signified to the said company the sale and adjudication of the shares, as required by law.

The petitioner prayed that the writ be declared to be null, and the secretary treasurer ordered not to transfer the shares.

In answer to the petition the respondent contended:

1st: That the sale of the shares *en bloc* was perfectly legal.

2nd. That the proceedings and conduct of the sale were regular and legal, and that even if there had been any irregularity, which is denied, it was waived and acquiesced in by the respondents.

3rd. That the sale of the shares *en bloc* was to the advantage of the defendant Barlow and his creditors.

*O'Halloran* Q.C. for appellants and *Geoffrion* Q.C. and *Hatton* for respondent.

The judgment of the court was delivered by—

TASCHEREAU J.—We are of opinion that this appeal should be dismissed. Art. 599 of the C. P. R. enacts that no demand for the annulling or rescinding of a sale of moveables under execution can be received against a

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purchaser who has paid the price, saving in the case of fraud or collusion. Now here, the purchaser, Morris, has paid the price of the adjudication, and no fraud or collusion is alleged by the appellant. How could we in the face of such a clear enactment, maintain the appellants' petition to set aside this sale? It is true that art. 595 enacts that the sale must not proceed beyond the amount necessary to satisfy the debt, but if the officer conducting the sale does proceed to sell more than necessary, is that a cause of nullity as against a *bonâ fide* purchaser? I do not think so, nor has the appellant cited any authority to support such a contention. By art. 598 the ownership of the moveables adjudged is transferred by the adjudication. At the very moment, upon his paying the price, the purchaser is vested with the ownership of what he has bought. That is the general policy of the law, as regards moveable property. On this I refer to Rodière *procédure civile*, (1), where the author under art. 622 of the Code Napoleon, which also enacts that he should not proceed further than necessary to pay the execution debt, says, "The sale terminated, the defendant or any third party cannot for any cause trouble the purchaser, because as to moveables, possession is a title." The only recourse (he adds,) that the defendant or third parties have, is against the officer or the execution-creditor.

Against a *bonâ fide* purchaser at a judicial sale of moveables, I take the law to be that there is no such thing as a petition to set aside the sale for the reason here invoked by the appellants. Even, if the seizure or the sale has been utterly illegal, the purchaser is protected. Bioche, *dictionnaire de procédure* (5), cites numerous authorities for that proposition. *On ne peut dépouiller des adjudicataires de bonne foi*, Bioche says.

*Appeal dismissed with costs.*

Solicitor for appellant: *George F. O'Halloran.*

Solicitor for respondent: *J. C. Hatton.*