

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Young and Knight v. Lambert, from Canada; delivered 11th February, 1870.

Present :

LORD WESTBURY.
SIR JAMES W. COLVILLE.
SIR JOSEPH NAPIER.

IN this case the Respondent claims the benefit of a seizure of goods, under a writ of *feri facias*, issued on a Judgment recovered by him against Messrs. Maxwell and Stevenson, of Quebec, merchants. The writ was issued on the 30th May, 1865, and certain goods, alleged to be the property of Messrs. Maxwell and Stevenson, were seized under the writ by the Sheriff. The Appellants opposed the execution on the ground that by a contract in writing, bearing date the 19th August, 1864, the property of Maxwell and Stevenson in the goods in question was conveyed to them, and an authority to sell expressly conferred by Maxwell and Stevenson for the purpose of securing repayment of advances made by the Appellants on the faith of this contract; and as repayment had not been made, that the seizure under the writ should be set aside.

The cause was heard in the first instance by Mr. Justice Stuart, one of the Judges of the Superior Court of Lower Canada. He allowed the opposition, and, after declaring that the opponents were pledgees of the goods in question, he granted main levée of the seizure thereof, that is, directed an *amoveas manus* against the execution creditor. This decision was reviewed by the full

Court. The majority of the Judges held that the contract had not been perfected by delivery of possession of the goods so as to constitute a pledge; and on this ground they reversed the decision of Mr. Justice Stuart and dismissed the opposition to the execution.

The case was then taken by appeal to the Court of Queen's Bench, and the Judgment of the Superior Court was affirmed. The Appeal to Her Majesty in Council now under consideration has been brought against the Judgment of the Court of Queen's Bench.

In the reasons of the Judges, which have been elaborately drawn up by Mr. Justice Badgley, the material point of contention is stated to be, "the opposants' want of possession of the pledge, actually or constructively," on or after the 19th August, 1864. It is at the same time stated that "the preferential privilege of the pledgee in the thing pledged, according to our law, is undeniable, over the creditors of the pledgor when the contract is complete and perfect." It is suggested (but for the first time) that supposing the contract of pledge to have been completed, the course adopted by the Appellants in opposing the execution was not in accordance with the Canadian law.

The goods in question were shipped at Liverpool, on board a steamer called the "St. David." They arrived at Quebec early in August 1864, and were reported by the master of the vessel at the Customs in Quebec as consigned to Messrs. Maxwell and Stevenson.

According to the regulation of the Customs, the goods were taken to their Examining Warehouse, and in the book of M. Metivier (the chief officer in charge of the warehouse) an entry was made of them as consigned to Maxwell and Stevenson. They were marked "M. & S." The lien on them for freight continued, and they were also liable to detention until the charges for Customs' duties and storage had been satisfied. Subject to these conditions, the consignees had the ownership and the possession of the goods and also the right of dealing with them according to the rules of law applicable to transfers of goods that are subject to charges, and actual delivery does not take place at the time of the transfer.

The officer in charge of the warehouse was bound not to part with the goods until the several claims for freight, duties, and storage had been discharged. But he was at liberty, with the sanction of the consignees, to substitute in his warehouse-book the name of another as entitled to their property and possession subject to the conditions then subsisting.

“The general rule of my office” (says M. Metivier) “is, when a party applies to transfer the goods to another party, I generally make a remark in my book to keep in mind of asking a proper order from the party to whom the goods are transferred, and that is very often.”

The goods having thus been placed in the Customs Examining Warehouse, and the entry having been made in the book of M. Metivier, Maxwell and Stevenson, on the 19th of August, 1864, asked for and obtained from the Appellants an advance of 1,800 dollars on the goods, described in the receipt for the “advance, signed by Maxwell and Stevenson, as wire-rope, rigging, &c., marked M. & S., ex steamer ‘St. David,’ and now in Her Majesty’s Examining Warehouse; said advance to be repaid to D. D. Young and Co., on or before the maturity of their note, together with a commission of 5 per cent. on amount advanced. Should the advance not be repaid at that time, D. D. Young and Co. to have the right of selling the rigging, &c., and paying themselves out of proceeds.”

A request note of the same date, directed to the officer in charge of Her Majesty’s Examining Warehouse, and signed by Maxwell and Stevenson, was given by them to the Appellants, whereby the officer was requested “to hold the goods” (described as in the receipt) “subject to the order of D. D. Young and Co., they paying the duty and storage charge before removal.” On the same day this was sent to M. Metivier, who wrote across it—“Accepted, F. X. Metivier,” and it was then returned to and kept by the Appellants. M. Metivier also wrote an entry in his own book opposite to the entry made when the goods were first placed in the warehouse. This second entry was—“Subject to D. D. Young’s order.” He says—“I made that entry in order that, in case the said wire- and rope-rigging were claimed by anybody, I should require the order of

D. D. Young and Co. before delivery." He further says that he would not have delivered the goods to Maxwell and Stevenson, or to any other, without an order from the Appellants.

Thus, as between the Customs and the Appellants, the latter stood precisely in the position in which Maxwell and Stevenson had stood before the request note was accepted and the entry made in the warehouse-book by M. Metivier; and as between the Appellants and Maxwell and Stevenson, the goods in question were sufficiently transferred for the purposes of the pledge or mortgage.

It appears to their Lordships that by the express agreement of the parties in this case, followed by the acceptance of the chief warehouse-keeper, there was a valid constructive delivery of the property comprised in the contract, and that the Judgment under appeal, which dismissed the opposition and gave effect to the seizure under the execution, to the prejudice of the rights of the Appellants as pledgees, cannot be supported.

Their Lordships will, therefore, humbly advise Her Majesty that the Judgment of the Court of Queen's Bench should be reversed, and that in lieu thereof it should be ordered that the Judgment of the Superior Court, which reversed the Judgment of Mr. Justice Stuart, should also be reversed, and the Judgment of Mr. Justice Stuart be affirmed with costs in both Courts. The Appellants are entitled to have their costs of this Appeal.