pardon (voir: Loi sur le casier judiciaire (1969-70) 18-19 Eliz. II, ch. 40).

Dans cette perspective, le moins qu'on puisse dire est que la question de savoir si une telle discrétion est ou non conforme au principe de la condamnation après audition impartiale (art. 2-e de la Déclaration) méritait d'être examinée. Elle ne l'a pas été, la cour se contenant de statuer que la discrétion octroyée quant au mode de poursuite ne contrevenait pas au principe de l'égalité de tous devant la loi. Et sur ce dernier point encore l'argumentation de la cour ne résiste pas à l'analyse. Car ce n'est pas parce qu'une loi est en principe applicable à tout le monde qu'elle y est nécessairement conforme, surtout si elle octroie un pouvoir absolument discrétionnaire, dont au surplus l'exercice a des conséquences sur les pénalités subséquemment infligées aux coupables.

Nos cours craindraient-elles d'appliquer la Déclaration canadienne des Droits lorsque c'est l'administration de la justice qui est en cause? L'affaire *Smythe* donne à réfléchir à cet égard. Si tel est le cas et si l'on se refuse à rendre inopérante une disposition législative parce qu'elle est traditionnelle et courante, il vaut mieux mettre ouvertement la Déclaration aux oubliettes. Les motifs de ce jugement de la Cour suprême n'enrichissent en rien le droit des libertés publiques au Canada. C'est le moins qu'on puisse dire!

29. Droit et pauvreté

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Poverty law relates to the distinct legal problems of the poor and to the body of law affecting them. This need not mean that there is a comprehensive closed legal system for the poor separate from the rest of society. Rather the poor are more consistently in contact with certain laws, have specific kinds of legal problems with greater frequency and are affected by laws in a manner different from the more affluent members of society.

It follows that a primary objective of poverty law must be the development of specialized responsive legal remedies for these legal problems. This is illustrated in the recent case of *Tessier* v. *Martel & Giguère* (C.P.M. 329,520) which considers the problem of the indigent debtor during seizure of basic household furniture by a judgment creditor. Art. 552(2) C.P. envisages an important protection for such debtor: $1,000 of household furniture and other things of a general use are deemed unseizable.

A right is only as good as its remedy. In the case of an illegal seizure, art. 596 C.P. envisages an "opposition to seizure". Yet, such a remedy takes time. If the bailiff removes basic household goods with resultant hardship for the debtor, the latter cannot obtain redress for a number of weeks: upon receipt of an opposition to seizure, the creditor may file a contestation ten days later (art. 601 C.P.); the debtor must then inscribe and await a trial date. An adjudication on the actual merits of the seizure would occur — at the very earliest two weeks following the seizure and then only on the condition that the debtor had immediately opposed the seizure, inscribed for trial upon receipt of the creditor's contestation, and requested a preferential hearing. Normally, the seizure would not come before the Courts until two months following the occurrence.

Delays for any man can cause an injustice; for the poor it may prove crushing. Even if a clear right is violated, even if the debtor suffers seriously, even if he is left without the basic essentials of life, no immediate remedy appears to exist. The temporary extra-legal remedies available for most litigants — a rental of household goods or a move into a hotel — are unavailable for those lacking the necessary liquidity.

If, however, a seizure could be opposed via a petition rather than an ordinary action much time could be saved. Rather than inscribing and awaiting a trial date, the matter could be adjudicated merely upon one clear day's notice (art. 78 C.P.). Moreover, if the seizure could be opposed by a petition framed in a manner *other* than a formal opposition to seizure, the creditor's contestation with its ten day delay could be avoided.

In *Tessier* v. *Martel & Giguère*, petitioner, a debtor in *forma pauperis*, alleged that his furniture had been seized pursuant to a judgment debt, but that his right to a $1,000 of household furniture had been violated. Petitioner presented a contestation of the *procès-verbal* of seizure in virtue of art. 232 C.P. coupled with a request that the Court revise the bailiff's evaluation in virtue of art. 552(2) C.P.

The Court found as a fact that the bailiff had left only $600 of household furniture, concluded that the *procès-verbal* was erroneous and inaccurate and revised the evaluation to $600.

The judgment does not — indeed cannot — declare the seizure illegal. This would be *ultra petita* the possible conclusions of such a petition. But in effect, it does terminate the seizure. The creditor knows that the seizure will now be declared illegal upon an opposition to seizure, because the $1,000 rule was violated. One may go further: if the creditor does not return the goods upon judgment declaring the $1,000 rule violated, the creditor would be clearly liable in damages.

It is to be noted that costs were adjudged against both the creditor and the bailiff. By such judgment, the Court appears to declare that a bailiff is not only an independent officer of the Court; for if he were, the creditor ought not to be liable for a public officer's error. Rather, the Court sees the bailiff as playing some role as agent of the creditor so that the creditor becomes liable together with the bailiff.

The judgment is important not only for what it says, but also for what it does not say. The creditor argued orally that the instant petition was the use of a wrong remedy and of a duplicity of proceedings, as an opposition to seizure alone should have been invoked. By ignoring this argument and accepting the petition, the Court permitted a quicker, more effective remedy to enforce a basic right.