all property held by the debtor at the time when such judgment was rendered or subsequently acquired by him. The second period extends from the 31st Dec. 1841, to the 1st of Sept. 1860, and judgments rendered during this period, affect only such property as the debtor possessed at the time when the judgment was rendered. The third period extends from the 1st of Sept. 1860, to the 1st of August, 1866, and judgments rendered during this period affect only such property as the debtor likewise possessed at the time when the judgment was rendered and which is described in a notice registered with the judgment. The fourth period commenced on the 1st of August, 1866, and any immoveable belonging to the debtor at the time of the registration of a judgment rendered since that day and of a notice describing such immoveable becomes affected by the judicial hypothec.

The rules governing this subject are to be found in sections 3, 47, and 48 of chapter 37 of the C. S. L. C., and in articles 2026, 2034, 2035, 2036 and 2121 of the C. C.

In the present case the judgment was rendered during the second period, and the property which it is sought to affect was only acquired by the judgment debtor on the 15th of May, 1856, nearly four months after the rendering of the judgment; it cannot therefore be affected by the judgment.

The judgment of the Court is as follows :—

"The Court, etc.

"Considering that the judgment, from which it is alleged that the judicial hypothec forming the basis of the action in this suit results, was rendered on the 28th of Jany. 1856, and that the judgment debtor only acquired the immoveable property which is the subject of the hypothecary action in this suit on the 15th of May, 1856, and that he only became possessed thereof on the last mentioned date;

"Considering that by law judicial hypothecs arising between the 31st of Dec. 1841, and the 1st of Sept., 1860, only affect such immoveable property as the judgment debtor possessed at the time when the judgment was rendered;

"Considering therefore, that the immoveable property described in the declaration was never affected by a judicial hypothec resulting from the judgment mentioned in the declaration and hereinabove referred to;

"Doth dismiss the action in this cause with costs."

Thos. P. Foran, for Plaintiff.

Henry Aylen, for Defendant.

CIRCUIT COURT.

HULL (district of Ottawa), Nov. 6, 1886.

Before WURTELE, J.

MONGEON v. CONSTANTINEAU.

Procedure—Judgment by default — Opposition — Proof.

When an opposition is filed to a judgment obtained by default upon the plaintiff's affidavit, the issue has to be tried, and evidence adduced, as it would have been if no judgment had been rendered.

PER CURIAM. The plaintiff brought suit on an account for goods sold and delivered, and took judgment on default upon his own affidavit.

The defendant has made an opposition to the judgment, by which he specially denies all indebtedness, and supports the same by his affidavit.

The plaintiff has answered that the defendant is indebted as stated in the declaration and detailed account, and that he had acknowledged his indebtedness.

The case has been inscribed for proof and hearing on the merits, and, without any proof having been made on either side, has been submitted after argument.

The plaintiff relies on his judgment and on the fact that the defendant had made no proof to impeach it.

It is an elementary principle that he who claims the performance of an obligation must prove it, and that testimony given by himself cannot avail in his favor. This rule of law is contained in articles 1203 and 1232 of the C. C.

As an exception to this rule, a plaintiff can obtain a judgment upon his own affidavit in the cases mentioned in article 91 of the C. C. P., but such a judgment does not always