this. Pont. (2 Priv. et hyp. suite de Marcadé, Nos. 1135 and 1180, and authorities there cited) agrees with Troplong, and says that the jurisprudence has settled the point according to Troplong's views.

See also, 7 Toullier, pages 383, 385, and 7 Boileux, pages 563, 580, 581 et note 2. 3 Aubry et Rau, pages 446 and 447, 31, Laurent, 280 à 284, 291 and 292.

In a case of Hulot *v.* Aujubault decided by the Court of Appeals, Orléans, on the 28th of May, 1851, it was especially held that if in such a case a personal creditor sues hypothecarily, he loses his personal action.

I would refer also to the case of Duplessis *v.* Poulet and Verna *v.* Roy, decided in the same Court in 1847. These three decisions are to be found in *Devilleneuve & Caret* (1851), pages 521 *et seq.* 2nd part.

The case of *Geoffroy* v. *Duplessis*, decided by the *Cour de Cassation* on July 1st, 1850 (Dalloz, Dic. de Jurisp., 1850, page 177 and the notes to it), may be also cited as being on questions relating to this one. There the surrender of the property was annulled because the price of sale was more than sufficient to pay the mortgages. There can be no such question raised in the present case; the sum due by Geriken was not sufficient to pay Quesnel's debt.

If he had paid his share he would have had to pay Quesnel's share, besides paying two shares, the half of the price, instead of one share, the fourth of the price. He could not, by paying his share of the price of sale, free the property from the mortgage lying upon it for Quesnel's share of this price. He could surrender the property, and thereby free himself from his own personal obligations at the same time as from the mortgage upon the property for Quesnel's share. Reeves cannot complain of it, since she herself gave him the option to surrender the property, and Quesnel (or Reeves in his name) cannot either complain of it, since he has lost his right of action against the defendant for the price of sale, by not fulfilling his share of the contract of sale, that is to say, his obligation of warranty towards the defendant against all trouble and hypothecs. Laurent (31, No. 283.)

The case of *Dubuc* v. *Charron* (9 L.C.J., 79), decided by Mr. Justice Badgley at Montreal in 1865, is precisely in point, and maintained the same doctrine.

The case of *La Société Permanente de Construction* v. *Larose* (17 L.C.J., 87), in Review, Montreal, 1871, though not exactly on facts similar to those in the present case, virtually decides the point in the same sense as *Dubuc* v. *Charron*. There the purchaser had specially stipulated that he would have the right to surrender the property, but the Court in its *considérants* says that this was a right which he had by the operation of the law.

Then there is the case of *La Société de Construction* v. *Desautels* (2 Legal News, 147), decided in April last by the Court of Review at Montreal, where it was held that hypothecary creditors, whom a purchaser had obliged himself to pay by his deed of purchase, forfeit their rights to a personal action against him by suing him hypothecarily.

I refer also specially to 20 Duranton, Nos. 252 to 257.

It appears to me that there could be no doubt upon this question of law. Another possible point of view in this case is this: Reeves accepted the delegation only after Geriken had surrendered the property on the hypothecary action. Till then Quesnel was alone Geriken's creditor. 7 Toullier, No. 286. He could till then have revoked that delegation (Art. 1029, C.C.), and even without doing so, and notwithstanding the delegation, he could sue Geriken for the price of sale, if any was due. *Mallett* v. *Hudon*, 21 L.C.J., 199. Reeves could never against her will be bound to accept this delegation. The question whether the registration was a sufficient acceptance of the delegation cannot be raised here, because she never intended to avail herself of the delegation till she accepted it by the deed of December 4th, 1877. On the contrary, she virtually refused the offer of this delegation by proceeding hypothecarily. It may be that under certain circumstances registration of a deed containing a delegation may be invoked by the party to whom the delegation is made, as an acceptance or equivalent to an acceptance of it, but it cannot be contended that such registration operates a forced acceptance of the delegation, and imposes it against his will on the creditor. Here it is only by the deed of December 4th, 1877, that Reeves accepted this delegation. But at this date Geriken owed nothing. The contract between him and Quesnel had been resiliated. He was entirely relieved from his price of sale, so that when Reeves accepted the delegation she was too late; Geriken had been freed from his obligations.

But now as to the question of fact, I have so far supposed that Geriken had been evicted from the whole of the property he bought from Quesnel. But is that so? Certainly not, etc.