

5. He also objected that the resolution appointing his successor, did not remove him. Here again he was unsuccessful, as also in the objection that the chairman of the meeting was not duly qualified. We have no hesitation in confirming the judgment.

*L. A. Seers and Lacoste, Globensky & Bisailon,*  
for plaintiff.

*T. Brossoit and R. & L. Laflamme,* for defendant.

#### COURT OF REVIEW.

MONTREAL, Oct. 31, 1882.

MACKAY, TORRANCE, MATHIEU, JJ.

[From S.C., Montreal.

LES COMMISSAIRES D'ECOLE DE ST. HENRI v. DESMARTEAU et al., and LA VILLE DE ST. HENRI, and PLAINTIFFS, parties collocated, and McLAREN, contesting.

*Prescription—Interruption—C.C. 2229—Ventilation.*

*A hypothecary creditor may invoke the prescription acquired by his debtor as to municipal taxes, notwithstanding the renunciation of the debtor.*

*A hypothecary creditor is entitled to ask for a ventilation, where it appears that by taxing a number of lots en bloc, the taxes due on a much larger extent of property were imposed on a portion, the proceeds of which are being distributed.*

The inscription in Review was on a judgment of the Superior Court, Montreal, June 30, 1882. In pronouncing judgment the following observations were made by the Judge *a quo* :—

JOHNSON, J. The town of St. Henri is collocated by the 7th item of the report, for municipal taxes, and the School Commissioners for School taxes, by item 5.

The contestant is a large hypothecary creditor, and he contests both of these collocations.

First, as regards the collocation of the Town: it is first of all to be reduced by the amount of arrears of taxes charged for the years 1876, 1877 and 1878, which are prescribed by law. It was said there had been an interruption of this prescription by payments made by Wilson who formerly held the *baillieur du fonds* claim now held by the contestant, but the articles 2187 and 2229 C.C. apply here, and the third party can oppose the prescription, even when the debtor renounces, which, however, as a matter of fact, is not clearly seen here. This is the first point in the case, and it has the effect of deducting at once from the collocation No. 7, the sum of \$443.

Then there are two other questions raised. It being admitted by Desève, the Secretary Treasurer, that these taxes were imposed by error, it would seem that the defendants, or the contestant as their creditor, should be allowed to plead such error. It was argued that the valuation roll was final. Without going into that at all, and more particularly without looking at it as regards third parties, a mortgage creditor like the contestant is surely entitled to complain of the fact, if it is a fact, that several distinct properties were taxed *en bloc*, if that fact whether irrevocable or not subjects him to the injustice of making a few lots pay the whole that is due upon a much larger number. He may say, your valuation roll may be very good as far as it goes, but it cannot make me pay in an arbitrary manner. I am entitled to a ventilation to see what proportion of the taxes ought to be borne by the lots sold, and what by those taxed but unsold. Whatever the effect of a valuation roll, surely it cannot have the effect of taxing the property of a third party to pay what neither he nor it owes. It is not necessary however to decide that now. The ventilation is necessary on account of the taxes imposed on what are used as streets. Therefore as to this question of proportion between the subdivision lots sold and those unsold, the Court orders a ventilation.

The third question raised was as to the taxes imposed on the lots of land partly owned by the Government under an expropriation for the enlargement of the canal, and without any regard to the expropriation. This question is decided against the contestant, the facts not being clearly made out.

On the contestation with the School Commissioners, the only question is that of the taxes on the land used for streets, and a ventilation is ordered on that head, the same as in the other collocation for the town. In the one case, therefore, the collocation is reduced by \$443, amount prescribed, and in the other by \$200,— amount admittedly paid; and in both a ventilation is ordered as to the balance of the collocation.

In Review, the judgment was confirmed.

MACKAY, J. MacLaren contests a judgment of distribution by which the town of St. Henri and the School Commissioners have been awarded money for taxes on lands in St. Henri