

same; and although such a possession be not a legal ground of defence to the present action, yet from it results a presumption of good faith on the part of the defendant, which cannot be disregarded in the decision of this cause; and in view of the equity of the case, this fact can in no wise aid the pretensions of the plaintiff.

Considering that by the terms and stipulations of the contract of marriage between Auguste Regnier and Marguerite Roy, executed at Montreal by and before notaries, the 6th of July, 1835, Auguste Regnier and Marguerite Roy, future husband and wife, notwithstanding the express exclusion of the legal community, did agree to and with each other, that there should be a conventional and partial community, (*une communauté conventionnelle et partielle*), existing between them, and that this stipulation, in all respects legal and recognized by law, results from the following clause in the aforesaid contract of marriage:—" *Cependant les bénéfices et augmentations appartiendront de plein droit par moitié aux dits futurs époux, et leur sortiront nature de propre, et aux leurs de leur estoc côté et ligne.*"

Seeing that by the contract of marriage aforesaid, between the parties aforesaid, there is to be found no stipulation whereby the future husband and wife should enjoy and appropriate the rents, issues and revenues of their respective properties separate and apart, and consequently that such rents, issues and revenues fall into and become a part of the aforesaid conventional and partial community; and considering that on the 13th of July, 1835, Auguste Regnier and Marguerite Roy were married under the operation of the above recited clause in their contract of marriage; and whereas, in and by a certain deed of sale and transfer, executed before notaries, on the 18th of April, 1838, one Chamilly De Lorimier, and his wife, Christine Rachel Cadieux, sold and transferred to Auguste Regnier and to Marguerite Roy, his wife, all the rights and claims they might have against one Léon Pinsonneault, in regard to certain sales of real estate, which three of the children of the late Pierre Cadieux had before that time made to Pinsonneault, of their share and shares in the half of the Cadieux farm, and which is in question

in this cause; which rights and claims had previously been transferred to De Lorimier and wife, the other heirs Cadieux.

And whereas, under and by virtue of the last mentioned deed of sale, the aforesaid Auguste Regnier and his wife became proprietors of the consideration money and the balances thereon of the sales, made by the heirs Cadieux to Pinsonneault, and thereby acquired the right to claim from Pinsonneault the price of three-fourths of the Cadieux farm, by them sold as above mentioned to Pinsonneault, and also the right to enforce a recision of these sales in default of payment of the purchase money by Pinsonneault.

Seeing that the purchase money on these several sales thus acquired by Auguste Regnier and his wife, from Chamilly De Lorimier and his wife Christine Rachel Cadieux, constituted an increase and augmentation of their property (*firent des bénéfices et augmentations*) in the terms of their contract of marriage, and were made and realized during their marriage, and as such fell into the conventional and partial community existing between Regnier and his wife.

Considering that by the deed of sale and transfer of the 30th of October, 1846, executed before notaries, and whereof the recision is sought by the present action, on the ground of fraud and *lésion*, Regnier and his wife sold to Lionais, the defendant, among other properties, real and personal, the aforesaid balances of consideration money by them acquired from Chamilly De Lorimier and wife, and which balances formed a part of the conventional and partial community existing between Regnier and wife, and of which Regnier, as her husband, was the chief and head.

Seeing that by the deed of sale and transfer of the 30th of October, 1846, Regnier and wife sold to the defendant certain real estate, which had fallen into and become part of the conventional and partial community existing between Regnier and his wife.

Considering therefore that the deed of sale of the 30th October, 1846, was made by Regnier and his wife to Lionais not only as persons separated as to property, but also as *communs en biens*, under the partial commu-