

stand in this position: Judgment could be pronounced under no circumstances against any one but J. Bte. Dorion. There could be no *solidarité* of condemnation, and thus the amount due by each would be reduced accordingly. Then, again, interest should not have been allowed on this money. The truth is there are objections at every stage of the proceedings. However, the judgment of the Court is based upon this: the respondent has obtained an assignment of the rights of the heirs DeBartzch, and brings his action as their assignee. Now, it is certain that the assignee has no more right than his assignors: they had no right in this case, for the money was not paid by them. This, in my view of the case, puts an end to the action. We must have dismissed the action if brought in the name of the assignors, and therefore we must dismiss it when brought in the name of the assignee. We restrict our judgment to this, that Mr. Kierzkowski has brought his action upon an assignment of rights which never existed. The judgment of the Court, in the first case, is that the judgment appealed from is erroneous, because by the evidence adduced, it is established that the sum of money claimed under the transfer of 18th March, 1862, was paid through and by the Hon. L. T. Drummond and Dame Josephite Elmire Debartzch, his wife, who alone can claim the amount, if usuriously and illegally exacted as pretended, and the other assignors, who have paid no part of said sum of money, have no right of action against the Appellants to recover any part of the sum, and consequently the judgment is reversed. In the case of Zephir Dorion, appellant, the judgment is also reversed, on the ground that the plaintiff has not proved the allegations of his declaration.

Mondelet, and Berthelot, JJ., concurred.

Leblanc, Cassidy & Leblanc, for the Appellants; *R. & G. Laflamme*, for the Respondent.

June 6.

VALLS, (defendant in the Court below,) Appellant; and THE BRITISH AMERICAN LAND Co., (plaintiffs in the Court below,) Respondents.

Damages—Assignment.

An action founded on an assignment. Assignment held to be valid.

This was an appeal from a judgment of the Superior Court in the District of St. Francis, rendered by *Short, J.*, on the 19th of March, 1863, by which the appellant was condemned to pay the sum of \$200, and interest.

The facts were these: The respondents, by deed of sale executed at London, England, on the 9th of January, 1855, purchased from Maria A. Cunningham, and Percy Arthur Cunningham, her husband, lots 5 and 6, in the 14th Range, and lot 6, in the 13th Range, Ascot, for the sum of £307 10s, stg. This land was purchased as free from all incumbrance, but on the 14th of October, 1858, the respondents were sued by the Appellant, Anna Maria Valls, in a hypothecary action, to *délaissier* the land, or pay a mortgage due her of \$1,200, for an annual allowance stipulated in her favor in the deed of settlement between the heirs of the late Hon. W.B. Felton, (the Appellant being his widow, and Maria A. Cunningham, his daughter,) for which the land was hypothecated. The respondents discovering the position of affairs, and finding their recourse against Percy Cunningham at that time of little worth, made an offer to the Appellant to purchase her claim against Cunningham and his wife, to hold it, in order that, if they came into possession of property thereafter, the Company might obtain indemnity for their loss, and prevent further mortgage from accruing. The Appellant agreed to assign to the respondents her *demande*, as well what had accrued as what might thereafter accrue, against Maria Cunningham and her husband, under the deed of settlement, for the sum of \$200, and the assignment was made accordingly. Some time after this, Cunningham upon the death of his father, came into possession of property and a title, and amongst other property he acquired a farm known as *The Edson Place*, in Barnston, worth \$1,200. The Appellant, though she had transferred her debt to the Respondents, caused an action to be instituted against Sir Percy Cunningham for £325, the amount of her claim under the deed of settlement, obtained judgment against him as an absentee, and caused *The Edson Place* and some other property to be seized and sold.

The respondents alleged that they had no