

COUR SUPÉRIEURE. Montréal, 30 Avril 1874.

Coram :—JONSSON, J.

LECLÈRE vs. GAGNON.

Vente verbale.—Action en passation de titre.

The question here is whether there has been a contract of sale proved between the parties, the action setting up that as a matter of fact the defendant verbally agreed to sell his house and lot to the plaintiff on the 17th Dec. last and asking as a consequence of the refusal to carry out this agreement, that he be condemned to execute a proper title deed, in default of which the judgment of the court may avail instead. The case was heard before me at *enquête and hearing*, and though I had little doubt at the time as to who ought to have judgment, I have taken time to consider as the subject is one of great importance to the parties. I have recurred to my notes and examined the pleadings, and I must say I have no doubt that the plaintiff ought to get judgment. He alleges the promise to have been made on a certain day, and the price to have been, subject to some unimportant conditions, \$1,000 payable on taking possession on the first of May following. The defendant pleads that there was no bargain made; that there were allusions to the subject (*pourparlers*) which he recounts; but positively denies the agreement to sell. The plaintiff puts his adversary in the box as a witness, and this is his answer to the first question that was put to him: "J'ai vendu ma propriété au village de Ste-Rose le 17 déc. dernier, pour \$1,000 avec des conditions. Mes conditions étaient que je vendrais au demandeur ma maison pour \$1,000 payables au 1er mai prochain." Now the plea is not that he agreed to sell the house only, nothing of that kind has been contended for, but it is that there never was a sale at all. This really disposed of the case, but the defendant was also cross-examined by his own counsel, and though he could not make out his own case, I am always quite pre-