which have not been declared by the vendor. The respondent, in 1872, purchased from the Grand Trunk Company certain lots of land situate in the village and parish of Longueuil. The price was $2,430, of which $607.80 was paid in cash at the passing of the deed, and the balance, $1,822.50, was to be paid in four equal annual instalments of $455.12 each. The deed contained a warranty against all mortgages and encumbrances. The respondent took possession and made improvements, and sold portions of the land. Some years after his purchase he brought the present action to resiliate the deed, on the ground that he had discovered the existence of two hypothecs for a large amount which affected the property so acquired by him as well as a larger extent of land. The action was maintained by the Court below, and the sale to respondent was annulled. The appellant complained of this judgment, on the ground that the respondent was only entitled to withhold payment of the balance of the purchase money until he was secured against trouble on account of these mortgages. The Code has made some changes in the law on this subject. The vendor now cannot sell property which does not belong to him, and the purchaser is entitled to have such sale annulled. It follows that any defect in the title, even before the purchaser is troubled, is a good ground for the resiliation of the sale. Where, however, the purchaser is merely exposed to be troubled by a hypothec on the property, he is only entitled to retain in his hands the price of sale, or balance of the price, until the vendor removes the hypothec or gives security, Art. 1535 is in point. Here there is no stipulation that the property is sold free and clear, but only the ordinary warranty against trouble. (His Honor then referred to the authors writing upon the provisions of the French Code, who all make the distinction between fear of trouble from hypothecs and defect of title.) It is a hardship perhaps to the purchaser of $2,000 worth of property to find that it is affected by hypothecs to an enormous amount. But the purchaser in such case is not without remedy: he may obtain a ratification of title. If the mortgagees intervene, he can call upon the Grand Trunk to guarantee him against trouble, or to remove the hypothecs. The purchaser here did not adopt this course: he made improvements, and then asked to have the sale set aside and to be paid for all his improvements. The law does not give him this right, and the judgment must therefore be reversed.

RAMSAY, J. This case is an action by the respondent to set aside the deed of sale of certain lots of land sold by appellants to respondent, for the sum of $2,430, because the said lots were subject to an hypothec of $200,000. The point submitted is very important owing to the voluminous commentaries on the alterations of the law in France under the Code, and I may add, by the able opinion of the learned judge in the Court below.

There can be no doubt that under our law before the Code an hypothec was not a *trouble de droit*, and no action would lie to set aside a deed of sale, because the property was hypothecated, unless there was the clause of special warranty, commonly called the stipulation of *franc et quitte*. But it is contended that this was a mere subtlety of the old lawyers, and that fundamental changes have been introduced by the Code which have necessarily abrogated the old law in this respect, or at all events warranted the introduction of what is contended to be a sounder doctrine, and that these changes are operated particularly by Articles 1065, 1492 and 1535 C. C.

As to the subtlety, it seems to me that the reproach may very fairly be retorted on the innovators. The old rule of law was laid down to check subtlety. Of course it is very easy to imagine cases of hardship under the old law, but they are not diminished or decreased by the rule now sought to be introduced. A title without any encumbrance is very rare, and a purchaser in bad faith might, in almost any case, stir up a very tangible defect in a title which really presented no practical danger. Therefore it was the old jurists said that the deed of sale, unless there were other words than the ordinary clause to *garantir contre tous dons, douaires, &c.*, only warranted the possession and enjoyment of the thing sold.

Troplong, with his usual facility, has undertaken to establish that the Code Napoleon has changed the old law. After invoking the forty years of social regeneration which had elapsed between the time Pothier wrote and the Code became law, the re-tempering of the law by the revolution, the necessity of contemporary interpreters, and the originality of the Code, he