

of which \$500 was acknowledged to have been received in cash at the passing of the agreement, and the balance of \$700 was to be paid in seven equal annual instalments. The respondent was then a minor, but he was assisted, for the purposes of the agreement, by his father, who was present, and who promised to procure a ratification of the agreement by his son when he should come of age. It was to enforce this agreement that the action was brought by the son, Duncan McLennan, and the judgment of the Court below sustained the suit.

It was contended by the appellant that Duncan McLennan was not entitled to claim the execution of the agreement, because it contained a clause to this effect: that if McLennan failed or neglected to make the payments as they came due he would forfeit all right to obtain a deed of sale, and he would, moreover, forfeit all monies already paid and which might thereafter be paid (which would then be considered as rent of the farm), and the parties would be considered as lessor and lessee. Here was a specific clause of forfeiture under certain circumstances, viz, the failure of McLennan to meet his payments punctually. The forfeiture had been incurred. McLennan became of age in January, 1875, a month after the passing of the promise of sale; the first instalment became due in December, 1875; but McLennan failed to meet either it or subsequent instalments. Further, it was to be remarked that the respondent did not ratify the promise of sale at the time stipulated, viz., when he came of age, and this failure to ratify, it was contended, was fatal. It was also alleged that the promise of sale was annulled by respondent's father in 1879, and the circumstances showed the father intended to make the contract his own. It was not until 1880, nearly six years after he had come of age, that the respondent served a protest upon the appellant, asking for a deed of sale. Lastly, it had been proved that the respondent had no interest in the suit, having transferred his rights, and he had not taken any part in the initiation of the proceedings.

For the respondent it was urged that he had never been put *en demeure* to fulfil the terms of the agreement. The defendant had stipulated the right to have the bargain rescinded in the event of failure to pay the instalments. The

plaintiff was a minor, and until his right had been declared forfeited he was always in time to ratify the promise of sale and ask for a deed. If the balance of price remained for a time unpaid it was through appellant's neglect, as he never demanded it. If it had been asked for it would have been paid, and the amount was tendered in good time. The pretended cancellation by the father was a nullity. As to the interest of the respondent, there was nothing pleaded on this head, and the point did not come up. The judgment of the Court below, it was submitted, should not be disturbed.

DORION, C. J. (dissenting). This action is to compel the appellant to grant to the respondent a deed of sale of a farm situate in the parish of St. Théodore, in compliance with a promise of sale made before Legris, a Notary Public, on the 7th December, 1874.

The appellant pleaded, that the respondent had not fulfilled the conditions of the promise of sale which had thereby become inoperative. The Superior Court has, however, maintained the action and condemned the appellant to give to the respondent a deed of sale in due form, and to deliver over to him the property claimed.

The appeal is from this judgment.

The circumstances which have given rise to the suit are as follows:

By a deed passed before Legris, a Notary Public, on the 7th of December, 1874, the appellant promised to sell the farm in question in this cause, to the respondent, then a minor, but assisted by Roderick McLennan, his father, who promised to have the transaction ratified by his son, when he should have attained the full age of twenty-one years. This promise of sale was made for the sum of \$1,200, of which \$500 were paid, at the time, and as to the balance of \$700, the respondent promised to pay it to the appellant in seven yearly consecutive payments of \$100 each, the first of which would fall due on the first day of October, 1875, with interest at the rate of seven per cent. per annum, to reckon from the first day of October, 1874.

The deed contains the following provision, which has given rise to the present litigation:—

"It is especially covenanted and agreed upon between the said parties hereto, that if the said Duncan McLennan makes regularly the said payments of one hundred dollars said currency, when they will fall due respectively, together