length, and numerous authorities were cited, and it was contended for the plaintiff, with great force, I think, that when Etienne Guy, *fils*, sold to Gerard, he could give no valid title as against the *appelés*, he himself acknowledging that it formed part of his father's succession, which was all substituted, and under the law (Art. 2244, C. C.,) this bad title ought to help to establish the defects of possession which hinder prescription. I will give no direct opinion upon that, however, though no doubt it might be a very important point; but, under the circumstances, I do not think it is essential to a decision of the present case. There can be no doubt, whatever the parties themselves (that is the heirs of Et. Guy, *père*) may have done, or have thought about it, the part of the estate now in litigation was decided by the Queen's Bench not to have fallen again into the substitution after Mme. Guy (*mère*) had bought it in at Sheriff's sale, but to have formed part of her succession, and therefore the plaintiff, under his mother's will, is entitled to get what he asks unless the plea of prescription is to prevail. Without going into the question, then, whether, apart from interruption or renunciation, the possession of the late Mr. Et. Guy, *fils*, or the title he was able to give, could enable him or those who derive their rights from him to urge the thirty years' prescription, I will only look now at that part of the special answer that is founded on the alleged interruption resulting from the will of the late Et. Guy, *fils*. I have read over and over again the remarkable passage in Mr. Guy's will that has relation to this subject. I would here read it again now; but the parties must be so perfectly familiar with it, and it really seems to me so plain, that I believe I may save the time. I will only observe that, after some preliminary provisions, such as directing the payment of his debts and funeral expenses, and vesting his estate in his executors, to be afterwards named, the very first thing that seems to have been on the testator's mind was to mention this subject, to which he devotes about five closely-written pages by way of explanation of it. There is a complete recognition in this will (as well as in the title he gave) of his character of *grevé*, and consequently of the existence of the plaintiff's rights in this property; and more than that, there is a plain direction to his legatee and executors to borrow money, if necessary, to pay him. I do not think it necessary to advert to the letters said to contain a recognition by the defendants themselves of the plaintiff's rights, for either the prescription pleaded exists or it does not. I think it cannot exist in the face of the admitted character of usufructuary in the testator at the time he sold, nor apart from that, in the face of the provisions conscientiously made in his will by the late Mr. Etienne Guy in recognition of his brother's and his brother's children's rights. Therefore, I give judgment for the plaintiff, and order an *expertise* as to the value, in default of delivery.

*Loranger & Co.* for plaintiff.

*Doutre & Co.* for defendants.

*Bethune & Bethune* for defendant Court.

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GUY v. GUY et al.

*Property belonging to Substitution—Fluctuation in value—Rights of appelé.*

JOHNSON, J. This is another case between the same parties, but raising altogether a different question. This time the question affects the property which was declared in the Queen's Bench to have belonged to the substitution, and the plaintiff wants to get the difference between the value awarded by the experts, and the value at the time of the death of Mr. Etienne Guy, on the ground that the plaintiff was entitled to get the property at that time. This pretension was urged in that case, and the Court, after argument, on motion, rejected it, and referred to the experts the question of the value at the time of the *expertise*, and they reported, and their report was homologated. The same experts being employed in the present case, have reported that the difference in value at these two periods of time amounts to $1,625—that is to say, that in July, 1875, the property was worth that much more than it was in June, 1878. What was referred to the experts was the actual value at the time of the reference. There can be no doubt about that; the copy of the interlocutory is here of record, as an exhibit. There is also the motion made by the plaintiff to have the value established at the previous date, and which was overruled by the interlocutory judgment. Here, then, was a distinct enunciation of a principle by one of the contending parties, and a distinct adjudica-