

Canada, c. 47. It does not give the reason, but only the effect, of the original enactment, which was directed against fraudulent conveyances, as their titles and preamble will show: the fraud sought to be defeated being that of debtors exposing their hypothecary creditors to the reiterated expense of new actions as fast as the debtor could find new purchasers. The law, as expressed in the Code (Art. 2,074), is:—"The alienation of an immovable by the holder against whom the hypothecary action is brought, is of no effect against the creditor bringing the action, unless the purchaser deposits the amount of the debt, interest and costs due to such creditor." The language of the Statutes is:—"Every sale or alienation of any nature whatsoever of any immovable charged with hypothec *duly registered prior* to such sale or alienation, after proceedings have been commenced for the recovery of the debt with the payment of which such immovable is charged, shall be null and void as regards the creditor who has commenced such proceedings, and such creditor may proceed against the defendant in such action to the seizure and sale of such immovable, as though such sale had never taken place, provided that in such case, the purchaser of the immovable so seized may prevent the sale thereof by tendering with his opposition, and depositing in the office of the sheriff the amount of the debt with which such immovable is charged, including principal, interest and costs, and not otherwise," &c. There is nothing in the Statute, nor in the code, that annuls the sale as between the vendor and the purchaser; it is merely said that such a sale does not affect the rights of the creditor, and does not stop the execution, unless the money is paid. The purchasers here, therefore (the opposants), had a title from their vendor—a title, it is true, that was of no avail against a creditor *whose hypothec was duly registered* previously (those are the words of the Statute) and who had commenced an action; but at the same time, a title that was perfect, as between himself and his vendor; a title which he could defend even against the hypothecary creditor by simply paying the money; a title that he could register, and, in fact, did register before the creditor registered his.

Now, coming to the cadastral system, we

find that it is said in article 2,173, "*If such renewal be not effected, the real rights preserved by the first registration have no effect against other creditors and subsequent purchasers whose claims have been regularly registered.*" What is "regularly registered?" What was it at that time? It is to be remembered that under the Code a hypothec has no effectual existence at all without registration, (articles 2,047 and 2,130) and real rights rank according to the date of their registration (2,130). Article 2,172 requires renewal of registration of any real right existing before the cadastral system came into force. Article 2,173 declares, as we have already seen, that if such renewal is not effected, the real rights which were preserved up to a certain time by a first registration, have no effect against subsequent purchasers whose claims have been regularly registered. The expression, "real rights" removes all possible doubt as to whether this article was intended to apply to the hypothec created in favor of a vendor by a deed of sale.

Here, then, we have two laws—an old law and a new law. The meaning of either of them, taken alone, is not doubtful; but we are concerned not so much with the meaning of either of them of itself, as with the effect of the later law on the previous one.

The Statute and the Article 2,047 said to the possessors of real rights in the persons of hypothecary creditors:—"You have mortgages which new purchasers cannot defeat or impede except by paying the money, if you only register your rights, and bring your actions." The second law said to these creditors: "Your rights cannot be preserved against subsequent purchasers unless you take the trouble to renew your registration in a given time." Are we then to have two systems of preserving hypothecs since the cadastral system has come into force? Can a hypothecary creditor bring his action, and wait for years without re-registering, and thus prevent a subsequent purchaser from acquiring a valid title? If he can, what becomes of our registration system? for lenders by the score will be ready to advance their money upon property appearing free on the books, and will then be exposed to hear that a real right, though not registered, still exists in virtue of the mere pendency of