

*sous seing privé*, a piece of land under seizure at the suit of P. This deed was not enregistered, and, moreover, the property had been donated to F. by P., with the condition that F. should not alienate it during P.'s lifetime. The appellant having put in an opposition, based on his purchase, to the sale of the property:—

*Held*, that his opposition was unfounded.

This was an appeal from a judgment rendered at Montreal by *Monk, J.*, on the 31st of December, 1864, dismissing an opposition filed by the appellant. The following were the facts of the case:—The respondent, Patrick Kiernan, who was defendant and incidental plaintiff in the Court below, having obtained a judgment against Francis Kiernan, seized an immovable belonging to the latter. Francis Kiernan put in an opposition to the sale, and his opposition was maintained, by a judgment rendered 12th August, 1864. Patrick Kiernan appealed from this judgment, but while the appeal was pending, Francis, with a view of terminating the difficulties with Patrick, desisted from the judgment on the opposition, and consented to allow Patrick, the respondent, to proceed with the seizure. The respondent accordingly filed the *acte de désistement* with the Prothonotary, and issued a writ of *vend. ex.* for the sale of the immovable previously seized. To this proceeding, the appellant, Charles S. Burroughs, put in an opposition, alleging that he had been the attorney of Francis Kiernan on the opposition which had been maintained, and that Francis Kiernan, on the 9th of May, 1864, had sold the property seized to him, Burroughs, to pay his costs. Patrick Kiernan, the respondent, answered, that this pretended sale had not been followed by tradition, and could not have any effect, as the property was under seizure. Subsequently, the respondent amended his contestation, by alleging that the deed of sale *sous seing privé*, invoked by the appellant, had not been enregistered; and that by a deed of donation in 1843, the respondent had given Francis Kiernan this same piece of land, on condition that he should not alienate it during the respondent's lifetime.

The opposition being dismissed, the opposite appealed.

*Per Curiam.* (DUVAL, C. J., AYLWIN, MEREDITH, and MONDELET, JJ.) There being no

error in the judgment appealed from, it is confirmed with costs.

*J. & W. A. Bates*, for the Appellant.

*Dorion & Dorion*, for the Respondent.

LATOUR *et al.*, (defendants in the Court below) Appellants; and GAUTHIER *et al.*, (plaintiffs in the Court below) Respondents.

*Promissory Note—Aval.*

A note, payable to the order of the plaintiffs, was endorsed first by L. L. and P. G. L., and underneath these names by the plaintiffs:—*Held*, that L. L. and P. G. L. endorsed as *avals* and security for the maker.

This was an appeal from a judgment of the Superior Court, rendered at Montreal by *Berthelot, J.*, on the 30th of April, 1864.

The action was instituted by the respondent, against Joseph Lacroix, the maker, and L. A. H. Latour and P. G. Lemoine, the endorsers of a promissory note for \$300, payable three months after date, to the order of Gauthier & Desmarteau, at the Banque du Peuple. The note was endorsed by Latour and Lemoine, and then underneath by Gauthier & Desmarteau. The plaintiff sued Latour and Lemoine as *avals*. The maker of the note did not appear, but Latour and Lemoine, the present appellants, appeared and pleaded—1st, That they had not put their names on the note as *avals*, but as last endorsers. 2nd, That the maker of the note had only received a value of \$150.

The evidence showed that Lacroix, the maker of the note, wishing to buy a quantity of flour from the respondents, offered them the names of the appellants as *sureties*, and that the latter endorsed the note as such. This was confirmed by the form of the note, and the position of the names on the back of it. The Court below having maintained the plaintiffs' pretensions, and held the appellants liable as *avals* and *cautions solidaires*, the present appeal was instituted.

*Per Curiam.* (DUVAL, C. J., AYLWIN, MEREDITH, and MONDELET, JJ.) There being no error in the judgment of the Court below, it is confirmed with costs.

*Barnard*, for the Appellants.

*Bondy & Fauteux*, for the Respondents.