

last mentioned style. The point held was that dealing in "cotton futures,"—that is, contracts in form of sales of cotton for future delivery, but with the intention on both sides to deliver no cotton but to settle by payment of differences in the market price, was gambling. Said the judge, "a betting on a game of faro, brag, or poker cannot be more hazardous, dangerous or uncertain. Indeed, it may be said that these animals are tame, gentle and submissive compared to this monster. The law has caged them and driven them to their dens; they have been outlawed, while this ferocious beast has been allowed to stalk about in open mid-day with gilded signs and flaming advertisements, to lure the unhappy victim to its embrace of death and destruction."

COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 4, 1886.

Before MONK, RAMSAY, CROSS, BABY, JJ.

LANGLAIS, appellant, and LANGLAIS,
respondent.

C.C. Art. 1301—*Renunciation by wife of right of usufruct as survivor.*

A wife commune en biens with her husband, may, during his lifetime, validly renounce to a right of usufruct reserved to her in the event of her surviving her husband, on property possessed by him subject to a substitution in favor of their children. The fact that on her husband's death she renounced to the community will not affect the validity of the renunciation of her usufruct, which does not come within the prohibition of C.C. 1301.

The jurisprudence on the subject of Art. 1301 reviewed.

RAMSAY, J.—The sum involved in this case is not great; but it brings before the Court questions of some delicacy, which have been treated on both sides with full appreciation of their difficulties.

On the 21st June, 1864, one Remi Langlais passed certain immovable property over to his son Joseph, by a deed purporting to be a donation, but which was in reality a *titre onereux*. This deed created a substitution in favour of the children of the donee. The clause is ambiguously worded, as is usual in

deeds creating substitutions; but it seems to be unquestioned that the wife of the donee, Zoe Ouellet, was to have the usufruct of the property after her husband's death, should she survive him; but, says the deed, "*la propriété des choses données était laissée aux enfants du donataire, qui seroient considérés à tous égards comme propriétaires incommutables du fonds des choses données à leur père.*" Further, the deed contains these words, "*bien compris que la substitution n'aura lieu dans tous les cas qu'après la mort de Dame Zoé Ouellet, &c., à qui la jouissance de la propriété est réservée dans tous les cas pendant son vivant.*"

The legal effect of this deed was to transfer to Joseph Langlais the land in question by *titre équipollent à vente*, subject to the substitution to the children of Joseph Langlais and of his wife Zoé Ouellet, the enjoyment of the *appellés* being in its turn subject to the usufruct of the mother surviving the original donee.

The charges which form the consideration of the deed were:

1st. Payment of two sums forming £300= \$1,200 to Pierre Langlais.

2nd. To the two heirs Robitaille, at their majority, £50 each=\$400.

3rd. To Sarah Croft an annuity of £24 a year for life.

The land was hypothecated for the payment of these several sums.

The charges on the property were so onerous that Joseph Langlais sold it to Polydore Langlais, by a deed bearing date 15th March, 1870, for the sum of £1,000, according to an authorization of the Prothonotary, fixing that as the lowest sum for which it could be valued, and charging the purchaser with the payment of all the debts affecting the property, and specially the claims of Elzear Langlais, and also allowing him to retain £300 as security for the payment of the annuity to Sarah Croft. The balance to be secured on real estate, subject to the substitution and the usufruct.

Zoe Ouellet became a party to this deed, agreed to it and renounced to her usufruct by the donation. By the same deed, Polydore Langlais, appellant, the purchaser of the property above described, sold to the vendors, Joseph Langlais and Zoé Ouellet, an emplacement for £300, and gave a receipt for the