

sent matter it is alleged in every suit that the firm are "traders," and that they are "insolvent;" so that the cases come literally under Art. 1998.

The equivalent under the French Code for the first part of our Art. 1998 is No. 2102, No. 4 of the Code Napoleon, and for the latter part, Art. 550 of the Code de Commerce. The former reads as follows: "2102. Les créances privilégiées sur certains meubles sont:
40. Le prix d'effets mobiliers non payés, s'ils sont encore en la possession du débiteur, soit qu'il ait acheté à terme ou sans terme.
Si la vente a été faite sans terme le vendeur peut même revendiquer ses effets tant qu'ils sont en la possession de l'acheteur, et en empêcher la revente, pourvu que la revendication soit faite dans la huitaine de la livraison, et que les effets se trouvent dans le même état dans lequel cette livraison a été faite."

Art. 550, Code de Com.: "L'Art. 2102 du Code Civil est ainsi modifié à l'égard de la faillite. Le privilège et le droit de revendication établis par le No. 4 de l'article 2102 du Code Civil au profit du vendeur d'effets mobiliers ne peuvent être exercés contre la faillite."

Bédarride, Achats et Ventes, discussing this question of privilege, and that of dissolution of sale as affected by Art. 550 above quoted and the supplementary article 576, says: "No. 330. Le bénéfice de l'Art. 576 du Code de Commerce est acquis aux ayants droits dès qu'il y a déconfiture et cessation de paiements. L'absence d'un jugement déclaratif de faillite ne créerait aucun obstacle au rejet de la demande en résiliation. On le sait en effet: ce qui constitue la faillite, c'est la cessation des paiements que ce jugement ne fait que constater. Aussi est-il admis en doctrine et en jurisprudence que l'absence du jugement déclaratif ne lie en aucune manière les tribunaux civils ou criminels; ils peuvent et doivent au contraire appliquer les règles spéciales de la faillite lorsqu'ils reconnaissent et constatent la cessation de paiements. No. 331.—Sa déconfiture judiciairement déclarée ou non, ne laisse au vendeur que l'action en paiement du prix, et le soumet quant à ce paiement, à la loi que subiront tous les autres créanciers. Ces derniers pour déterminer ce résultat, n'ont à établir que la cessation de paiements en fait."

Article 2000 C. C., relates to the vendor's

privilege in ordinary cases, and does not affect the exceptional case of "insolvent traders" provided for by the last clause of 1998, and so cannot affect the present case.

Secondly. As to the right of dissolution of the sale. Under the old law this was co-extensive with and subject to the same conditions as the right of preference on the price. In ordinary cases the latter right was unlimited as to time except as affected by prescription; and the former likewise, so long as the property was in the hands of the purchaser.

Although our Code has no article corresponding to Art. 1654 of the Code Napoleon which in express terms provides for the dissolution of the sale in case of non payment, yet it is admitted to be part of our law by Art. 1543 C. C. which restricts its exercise to property in the possession of the purchaser, and it has been expressly sanctioned by our Court of Appeals in *Henderson & Tremblay*, 21 L. C. J., p. 24, since the Code.

It is to be observed that the question of insolvency did not come up in *Henderson & Tremblay*. It was not alleged nor proved, nor is there any allusion to insolvency in any way.

It is submitted that the restriction of the preference on the price in the case of "insolvent traders" to 15 days from the sale, operates as a limitation of the right of dissolution of the sale to the same period.

As will be seen from the above references the law of France on the subject under Art. 2102 C. N., No. 4, and Art. 550 Code de Commerce, differs from our law as established by C. C. 1998 only in this: that in France the preference on the price ceases with the *delivery* in the case of insolvent traders; here it ceases 15 days after the sale.

In France, be it remarked, there is nothing in either the Code Napoleon or the Code de Commerce, or elsewhere, expressly limiting the right of dissolution of the sale which is given by Art. 1654 without qualification to every unpaid vendor.

Yet it is conceded by every writer on the subject and by all the decisions of the Courts, that the taking away the right of revendication and of preference on the price accorded by Art. 2102, No. 4, after delivery in the case of insolvent traders, by Arts. 550 and 576 of the Code de Commerce has impliedly and necessarily had