

1 of Gilmour's statement. Dufresne says that the consideration was the obligation on the part of Gilmour to pay the notes and drafts signed and accepted by Frappier, and to pay him, Dufresne, \$3,000. (See Dufresne's answers to interrogatories 13 and 14 and to cross-interrogatories 2, 6, 8, 12, 13 and 14). The contradiction is strikingly apparent between these two versions as to what the consideration was; but there is much in all that occurred as related by those directly concerned to bear out the version given by Dufresne. It is somewhat strange that one of the notes spoken of by Gilmour as forming part of the consideration should remain in his possession until he is examined as a witness on the 17th December, 1889, or more than one year after the sale, and that the other two notes or their whereabouts are not considered as of sufficient importance to be accounted for by any one. As to the Frappier notes and drafts Gilmour, on the 27th August, 1888, gave the following letter to Frappier, as Dufresne had promised would be done at his interview with the latter the day before the sale: "Montreal, 27th August, 1888. To A. Frappier,—I hereby agree to return all notes signed by A. Frappier; those past due and falling due without costs or protest, A. H. Gilmour." And table 3 of Gilmour's statement gives a list of these notes amounting to \$4,388.77. As to the \$8,000 spoken of by Dufresne there is nothing in the evidence regarding it apart from his own statement; but it is somewhat confirmed by the following note given by Dufresne the day following the sale: "Montreal, August 6th, 1888,—Four months after date I promise to pay to the order of A. H. Gilmour, Esquire, \$1,417 at La Banque Ville-Marie for value received." To the uninitiated this transaction, just at that time, seems most singular; but Gilmour accounts for it as being an indication of his continued confidence in Dufresne's solvency. As to the mortgage Gilmour says it was to cover advances already made, and it is so stated in the document itself. In table 2 of Gilmour's statement he gives a list of the cheques and notes which make up the amount covered by the mortgage, \$3,000. Dufresne is very hazy in his recollections about the mortgage; in fact he is not

by any means sure that there was a mortgage at all. (See his answers to interrogatories 19 and 20 and to cross-interrogatory 3). Again, as to the amount of Dufresne's indebtedness to Gilmour there is a marked difference between them as to its amount. At the time of the abandonment he gave it as \$10,726.34, and in his examination he is a good deal mystified as to what it was. (See his answers to interrogatories 3, 4, 15 and 23 and cross-interrogatory 1). Gilmour at the commencement of his examination fixed it at over \$25,000 and less than \$27,000, but later, upon examining more fully into it, he gave the amount definitely as being \$38,000.

These are the facts and circumstances concerning this whole matter as shown by the evidence and by the exhibits produced by the plaintiffs and the defendant Gilmour. The following authorities may be referred to as having more or less bearing on this case:—*Delorimier*, Vol. 18, p. 59-61; *Sirey*, Vol. 1, p. 759, Nos. 8, 10, 59-60; 10 L. C. R., p. 125; 2 L. C. L. J., p. 39; 12 L. C. J., p. 315; 8 R. L., p. 627; 10 R. L., p. 390; 4 L. C. J., p. 220; 3 *Leg. News*, p. 398; 4 *Leg. News*, p. 215; 4 *Q. L. R.*, p. 298; 7 *Leg. News*, p. 276; 15 R. L., p. 91; *M. L. R.*, 3 S. C., p. 201; 2 S. C. R., p. 571; *M. L. R.*, 6 S. C., p. 277.

Applying these authorities, as amplifying the general principles laid down in the Code, and especially the comprehensive remarks of Mr. Justice Taschereau in the Supreme Court, to the facts as I have given them in this case, I am, as the authors say, compelled as a jury would be to declare whether I believe that on the 25th August, 1888, Dufresne was insolvent and whether Gilmour knew him to be so. I have little hesitation in answering both questions in the affirmative; and it is needless to say that having come to that conclusion plaintiffs' action must be maintained, and the deed of sale in question be annulled and set aside as having been made in fraud of plaintiffs' rights.

*Fortin* for plaintiffs.

*Amyrault* for defendant Gilmour.