The judgment of the Court below condemned the appellants to deliver up the 130 cords of wood or pay the respondents $159.50.

The theory on which this judgment appears to be founded is that the wood was stolen property, that cutting it into firewood did not alter its nature, that it was not a commercial contract, and that it was not sold in open market or in the ordinary course of business.

The governing principle with regard to moveables is that *possession vaut titre*. The exception that stolen effects may be recovered by the owner even from the innocent purchaser. That is to say, the thief could not convey a title. To this exception there were exceptions. This system has been modified by the Code. It starts from the doctrine that "the sale of a thing which does not belong to the seller is null, subject to the exceptions declared in the three next following articles." This is not only a novelty, it is a rule incompatible with other parts of the Code, and, above all, it is absurd, as being physically untrue. The sale of another's property gives rise to prescription, and, followed by possession, it creates a presumption of lawful title. These are not provided for in "the three next following articles," but by Article 2268. Again, A sells B a penny roll, which B eats; the sale cannot be null. It has had its fullest effect. It may be said that the Code merely refers to the legal effect, but this answer, as I have shown, is insufficient. The legal effects are as apparent as the physical. The truth is the doctrine of the old law was set aside to make room for a false doctrine, presumed to be more in accordance with the rule of morality, the mischief of which was to be remedied by exceptions. It may, perhaps, be said that Article 1487 C. C. should be interpreted as though it only applies strictly between the parties. But be this as it may Articles 1488 and 1489 establish two categories which are notable exceptions to Article 1487 however interpreted. Article 1488 excepts the sale in all commercial matters. Article 1489 lays down a rule for articles lost or stolen; they can only be revendicated from a purchaser in good faith who has bought at a fair or market, at a public sale or from a trader dealing in similar articles, on repayment of the price of acquisition.

Now admitting, for the sake of argument, that this cordwood was lost or stolen, it seems to me it was bought in good faith by appellants from a person trading in similar articles. It was not, of course, a commercial matter, but trading, in Article 1489, does not appear to me to be restricted to commercial matters. A farmer does not do an act of commerce in selling cordwood from his land, but he certainly trades or deals in similar matters. The respondents, then, taking the most favorable view of the case for them, should have offered to reimburse the appellants the price they paid for the wood.

But another question arises. Was this wood lost or stolen? I think not. At most, the breach of the covenant between Martin and the respondents was merely a trespass—a question of title subject to some difficulty. It is very true that under our Registry laws the holding of Martin was precarious in the extreme, and might be defeated. The Company respondents might have sold the land out and out, but this does not appear to me to depend in the least on the declaration of the location ticket that the covenant is personal, but on Article 2098. See also Article 1478.

There is a third reason why I think the judgment cannot be maintained. Respondents had no right to more than the value of their timber as against appellants in any case.—Article 435. To convert their action of damages against their impecunious purchaser into a claim against an opulent company is ingenious, but scarcely calculated to succeed.

Allusion has been made to the case of *Cassils & Crawford*. In the case of *The City Bank & Barrow* (L. R. 5 House of Lords, p. 669), that decision has been the object of what I may almost call bitter invective in the House of Lords, with what show of reason I am not called upon now to discuss. It will always remain a question of taste how to deal with judicial utterances. It may seem witty in some circles to read this Court a lecture on the Titles of our own Code. To reasoning persons it will probably appear to be superficial. For my part I am a thorough democrat in the republic of letters, and I seek no quarter for my judicial opinions. If I cannot sing with Longfellow, "I shot an arrow in the air," in expressing an opinion, I may so far borrow his idea as to say that I have sent forth a warrior to do battle for truth, and to help to create a jurisprudence, or be overwhelmed, according to its deserts. Being of this mind, it signifies little to me whether a Lord Chancellor is pleased to transfer the tactics of a debating society to the benches of the House of Lords or not. But I am not indifferent to misrepresentation in such matters, and it seems to me to be fair to the public, as well as to myself, to state that I never said broadly or the reverse that pledge was implied in sale; but I did say this, that if a thief could not sell he could not pledge, and to this I adhere. It is obvious that what the law intended to strike was the crime and the profit to the probable criminal, and not any particular form by which he tried to secure the profit of his delinquency.

Judgment reversed.

Hall, White & Panneton for the appellants.

Brooks, Camirand & Hurd for the respondents.