

ment; that by deed of sale 26 June 1877, the defendant Onesime Beauchamp sold the land to opposant, and her deed was duly registered on 22nd January 1878, before the *délaissement*:—that from the day of her purchase she has been in open and public possession:—that opposant is now wife of Louis Ovide Grothé separated as to property by contract 7th April 1878. Plaintiff contested this opposition, alleging that the action (hypothecary) was served upon defendant on 16 January 1878, that defendant was then sole proprietor of the land, having acquired it from one Jean Marie Grothé, personal debtor of plaintiff by purchase of 14th October 1876, registered 3rd January 1877, that the purchase invoked by opposant was only registered on 22nd January 1878, several days after the service of the action; that the deed invoked by opposant shows that she is personally bound to plaintiff for payment of the debt of the latter.

TORRANCE, J. The non-registration of the deed to opposant before the institution of this action is fatal to her title. C. C. 2074, says specifically, that the alienation of land by the holder against whom the hypothecary action is brought is of no effect against the creditor bringing the action, and contrary to the pretension of opposant, this rule is directly applicable to the present case. See also *Lefebvre v. Branchaud*, 1 Legal News, 230.

Opposition dismissed.

Geoffrion for plaintiff.

Dalbec for opposant.

CIRCUIT COURT.

MONTREAL, March 27, 1880.

DESMARTEAU et al. v. MANSFIELD.

Right of action—Goods sold on order obtained by travelling agent.

The plaintiffs, merchants doing business in Montreal, sued the defendant in the District of Montreal for a balance of \$86.96 for goods sold and delivered. The defendant was described in the writ as of New Edinburgh, County of Carleton, Ontario, and he was served personally in the City of Ottawa in the said County of Carleton.

The defendant pleaded a declinatory exception, on the ground that the Court before which he was sued was neither the Court of his domicile, nor the Court of the place where he had been served personally, nor the Court of the place where the right of action

originated, (C. P. 34.) The goods, it appeared, had been sold on an order obtained from defendant at his domicile by a travelling agent of plaintiffs, and ratified by them in Montreal.

The defendant, among other authorities, cited Rolland de Villargues *vo. Ratification*, par. 5, De l'effet des ratifications, Col. 2, No. 82:—" Il résulte de cette disposition deux principes très-importants, savoir: 1° Que la ratification a un effet rétroactif, relativement à la personne qui ratifie. 2° Mais que l'effet rétroactif ne peut préjudicier à des tiers avant la ratification." With regard to the person who confirms or ratifies, the author adds: " Ce n'est point à son égard un contrat nouveau; c'est l'ancien qui conserve ou reprend sa force, et qui produit son effet du jour de sa date, et non pas seulement du jour de sa confirmation." Also Pothier, Obligations, No. 79.

JETTE, J., referred to the decision of Mr. Justice Papineau in *Gault et al. v. Bertrand* (2 Legal News, p. 411), and maintained the exception.

Action dismissed.

Trudel, De Montigny, Charbonneau & Trudel for plaintiffs.

Prevost, Préfontaine & St. Julien for defendant.

CIRCUIT COURT.

MONTREAL, April 16, 1880.

PREVOST v. JACKSON.

Right of action—Sale by broker subject to ratification by principal.

The action was brought before the Circuit Court, Montreal, for the price of certain goods sold to defendant, who was described as of Toronto, Ontario, and service was made upon him there.

The defendant pleaded a declinatory exception, that he could not be sued before the Court of Montreal, the right of action having originated at Toronto.

It appeared that the sale had been effected through one Kilner, broker, of Toronto, subject to the ratification of his principal in Montreal.

RAINVILLE, J., was of opinion that the right of action under such circumstances originated in Montreal, and would adhere to the rulings in that sense, until the question was otherwise settled.

Exception dismissed.

Rainville for plaintiff.

W. B. Lambe for defendant.