

**BUSINESS IN APPEAL.**

The January Term commenced with 111 inscriptions, an increase of four on the September and November lists, the Christmas holidays not interfering with the advance of fresh cases. Twenty appeals were heard on the merits, besides one case submitted on the factums. There were also two Crown Cases reserved. Twenty-two judgments were rendered, of which four were in cases of the January Term. One of the reserved cases was also decided, and the other sent back for amendment.

**NOTES OF CASES.****COURT OF QUEEN'S BENCH.**

MONTREAL, January 20, 1883.

DORION, C. J., RAMSAY, CROSS & BABY, JJ.

THE GRAND TRUNK RAILWAY CO. OF CANADA (deft. below), Appellant, and BREWSTER (plff. below), Respondent.

*Sale of Immoveable—Hypothec not disclosed—Remedy of purchaser.*

*The purchaser of real estate who is not evicted nor disturbed in his possession, has no right to obtain the rescission of the sale by reason of certain undischarged hypothecs registered against the property (far exceeding in amount the whole capital of the purchase) and which were not declared to him in the deed, unless the vendor sold with a stipulation of franc et quitte.*

The appeal was from a judgment of the Superior Court at Montreal, setting aside a sale made by the railway company to the respondent of certain lots of land situate in the village and parish of Longueuil. The judgment also condemned the Company to repay to the respondent the sum of \$6,667.50, as comprising the amount paid by the respondent on account of his purchase of the lots in question, and the value of improvements made by him on the property since the date of the purchase.

The ground on which the cancellation of the sale was demanded was that encumbrances for large amounts had been found to exist on the property. The respondent purchased the lots in question in 1872 for the sum of \$2,430, of which \$607.50 was paid in cash at the passing of the deed, and the balance of \$1,822.50 was

to be paid in four equal annual instalments of \$455.13 each. The sale was made with promise of warranty against all mortgages and encumbrances. The respondent after taking possession of the property so acquired by him built on a portion of it, and made various improvements, and sold portions of it. Since these expenditures and sales were made he had discovered that there existed two encumbrances on the whole property, of which these lots formed a part, namely, one in favor of the Seminary of St. Sulpice for \$100,000, and another in favor of the British American Land Company for a like sum of \$100,000.

The Company, by demurrer, pleaded that there was no allegation of eviction, nor did it appear that there had been any attempt to evict the present respondent from the property, and he was not entitled to ask for the rescission of the deed. This plea was overruled, as well as a second demurrer, setting out that the only conclusions which Brewster ought to have taken were that, in consequence of his being troubled, or fearing trouble from the hypothecs, he be authorized to delay payment of the balance until the vendors should cause the trouble to cease, or give him security against the same. The other pleas were also overruled, and the action maintained.

*Macrae, Q. C.*, for appellant:—There is no clause of *franc et quitte* in the deed, and the respondent is only entitled to delay the payment of the balance until security against trouble is given him. Even if the action were held to be well founded, the amount awarded by the judgment is excessive.

*L. H. Davidson* for respondent:—Although it is true the respondent had the right to delay the payment of the balance of the purchase money, yet he has also the right to have the sale annulled and to recover damages. The former remedy would be of no benefit to him under the circumstances of this case, because it would not protect his improvements, and would not enable him to give a good title to others. The property would be left dead on his hands. The judgment annulling the sale was the only remedy which afforded the respondent redress.

DORION, C. J. The question in this case is whether the purchaser of real estate can demand the rescission of his deed of purchase, on the ground that the property is subject to hypothecs