

attacked a transaction to which he was not a party, and asked, not that the obligation should be annulled, but that its registration should be cancelled. "What interest or right," asked Mr. Justice Hall, "has he to make that demand unless and until it is legally established that he is a real, not an imaginary sufferer by it? His only justification would be the assumption that the registration of the mortgage was an absolute nullity." His Honor referred to Art. 1033, C. C.: "A contract cannot be avoided unless it is made by the debtor (1) with intent to defraud, and (2) will have the effect of injuring the creditor." And Art. 2023 says: "Hypothec cannot be acquired, *to the prejudice of existing creditors*, upon the immovables of persons notoriously insolvent, or of traders within the thirty days previous to their bankruptcy." That is, as the present judgment holds, the hypothec is valid as between the parties, and even other creditors cannot attack it unless they are prejudiced by it.

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In *Darling v. City of Montreal*, the Superior Court, Montreal, Doherty, J., May 4, 1893, held that a special assessment to defray the cost of an improvement in the city of Montreal, must be based upon the values of the properties declared to be benefited. An assessment roll not based on the values of the respective properties subject to the assessment, but made on the principle of dividing the whole area into sub-divisions and assessing each sub-division at a fixed rate per superficial foot, entirely irrespective of the values of the properties therein contained, is, it was held, contrary to the provisions of section 228 of the Montreal City Charter, (52 Vict., ch. 79), and will be annulled. As the assessment rolls in several cases have been based upon the same principle of superficial area instead of values, the decision affects a number of expropriations, and will, it is understood, be brought before the Court of Appeal.

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