

Privilege—Wages—Period for which privilege exists—C.C. 2,006.

JOHNSON, J. The plaintiff contests items 7, 9 and 11 of the report of distribution which gave her, under her judgment for two years' wages, only the amount due for one year and interest, amounting to \$85 in all, and distributed the balance of the \$160 levied, *au denier la livre* between her and the building society, which had an obligation on the property, but only registered after the seizure. The contestation maintains the plaintiff's right to two years by privilege. I cannot see that this report is wrong. It recognizes the non-existence of the Building Society's hypothec, which was only registered after the seizure, and divides the balance *au marc la livre* between the plaintiff and the society. It was said the latter had not registered its hypothec; neither is its hypothec recognized by the report at all; but only the debt for which it ranks like the other creditor *au denier la livre*. As to the rest of the contestation, it might perhaps have been urged if the plaintiff's judgment had been registered. Report of distribution maintained, and contestation dismissed with costs.

J. J. Curran, Q.C., for collocated party.

O. Augé, for plaintiff contesting.

THAYER v. ANSELL, and Moss et al., opposants.

Privilege—Registration—Alienation of immoveable by holder while hypothecary action is pending by a creditor whose claim has not been re-registered under the cadastral system—Rights of the latter as against purchaser with duly registered title—C. C. 2074, 2173.

JOHNSON, J. The point in this case is of some importance and, as far as I can ascertain, has never presented itself before. The plaintiff has seized, under a judgment obtained against the defendant, property which the opposants claim as belonging to them. The facts of the case are as follows:—The opposants became proprietors of the undivided half of an immovable at Cote St. Catherine, by deed of sale from the defendant, in 1874. In October, 1875, they acquired the remaining half—also by deed of sale from the defendant. Before the latter deed was signed, Mr. Cushing, the notary, at the request of one of the opposants, went to the registry office and

made search to ascertain if there were any encumbrances registered against the property, and having reported that there were none, the deed was executed. Some time afterwards, the property in question was seized under the plaintiff's execution, and the opposants then became aware, for the first time, that in July, 1875, the plaintiff had brought an action against the defendant for a balance due to him under a former deed of sale to the *auteur* of the defendant, and that the plaintiff had obtained judgment in that action in October, 1875, two days before the second deed of sale, from the defendant to the opposants, was passed. The opposants thereupon filed their opposition, founded on the two deeds above mentioned. The plaintiff, in his contestation, admits the first deed, but disputes the second, and claims the right (under article 2,074 C. C.) to proceed to the sale of the one half. The opposants make answer that at the time the second deed was executed and registered, the plaintiff had no registered rights of any kind upon this property, available against third parties whose rights were registered, and that his action and judgment therefore can have no effect as against the opposants. The plaintiff's claim is founded on a deed executed before the cadastral system came into force. The opposants' deed was executed in accordance with the requirements of the new system—that is, contained a description of the property by its cadastral number, and was duly registered. No renewal of the registration of plaintiff's deed had at this time taken place; and the books of the registry office, therefore, did not show that such a claim existed. The opposants' contention upon these facts is that the plaintiff's claim, in consequence of the non-renewal of registration, is of no effect against them. The position of the plaintiff, on the contrary, is that his rights were never impaired at all by the sale to the opposants, which, under the law, as it is contended, had not even the effect of alienating the property. I have said that the point thus raised appears to me important, and I have taken time to consider it, and am now to give judgment, and state the grounds on which I give it.

The article of the Code (2,074) is founded on the Statute of 1859 (22 Vict., c. 51), which is reproduced in Consolidated Statutes of Lower