

precedence, otherwise the rule would be of no use. In the absence, however, of a special article it is not without doubt whether a Court should extend its discretionary power to interpret legislative enactments so as to introduce a totally new rule of law. I am inclined, however, to think that in a case where there is a rule of an analogous character, containing precisely the principle invoked, and a further disposition seeming to imply that it was the intention of the legislature to include the case not specially provided for, it is competent to the courts to interpret the law so as to include it.

But this does not decide the case. The point on which it turned in the Court below was, that as this was a judicial hypothec it could only attach to property possessed at the time when the judgment was rendered. This was not a difficulty before the Code, but now, it appears that this distinction only applies to judgments before 1st September, 1860, (C.C. 2036). We, therefore, have one article (2034) expressing the law as to the hypothec of judgments generally, then we have a provision as to their effect before the 31st December, 1841, (2035), and again another as to their effect between this date and the 1st September, 1860; but none as to those since. How do they attach? This is provided for by the article already cited (2121). But here another difficulty arises: they only attach "on notice specifying the immovables of the debtor." Was the immovable in question an immovable of the debtor on the 17th December, 1877, when the registration took place? If not, are we to extend the interpretation we have given to the law, on the strength of art. 2130, to judicial hypothecs? The English version uses the word "deed," which would seem to exclude a judgment supplemented by a notice specifying and describing the immovables. A deed is an instrument in writing comprehending an agreement or contract. It is somewhat more circumscribed than an "*acte*" in French. But this difficulty is avoided by the French version of the Code which uses the generic word *titre*, and, curiously enough, in the English version the word *title* is used in an exactly analogous case immediately preceding the one quoted in the same article. I am, therefore, disposed to think now, that the alteration of the law in the Code, which was not mentioned at the bar, and

probably not brought before the learned Judge in the Court below, is in favor of appellant, and that the judgment should be reversed.

TESSIER, J., remarked that in *Dallaire & Gravel*, the parties had not the same *auteur*, but here they derived their title from a common *auteur*. The registration of the purchase was made within 30 days after the sale, but this delay was a privilege granted in favor of the vendor and not of the purchaser.

The judgment is as follows:—

"Considering that the judgment which the appellant obtained on the 13th day of December, 1877, against Jean Baptiste Payet, was duly registered on the 17th of December, 1877, with a notice describing the property thereby affected as required by art. 2026;

"And considering that the deed of sale *sous seing privé* by the said Jean Baptiste Payet to the respondent of the 20th day of November, 1877, although anterior in date to the said judgment, was only registered after the said judgment had been registered, to wit, on the 20th of December, 1877;

"And considering that according to Article 2130, real rights which are subject to registration, other than those therein excepted, take their rank according to the date of their registration, and that neither the judgment obtained by the appellant against the said Jean Baptiste Payet, nor the deed of sale by the said Jean Baptiste Payet to the respondent, fall within any of the exceptions mentioned in said article;

"And considering that from the dispositions contained in Articles 2036, 2080, 2098, 2120 and 2130, the said appellant has acquired a judicial *hypothèque* on the property described in the declaration in this cause, from the date of the registration of the said judgment and notice describing the said property;

"And considering that by virtue of Articles 1027 and 1472 of the Civil Code, the respondent, in the absence of registration of her deed of purchase, acquired no title to the said property as against the said appellant who had registered his judgment prior to the registration of her said deed of purchase;

"And considering that there is error in the judgment rendered by the Circuit Court, sitting at Sherbrooke, on the 14th day of October, 1878;