

from the date of these presents, and then the said purchaser shall re-deed to the vendor any part of the said property that may remain unsold after receiving the aforesaid amount and interest.'

The vendor was, at the time, indebted to the purchaser in the sum of \$2,941. The two documents were registered. The vendor had other properties, and gave the purchaser a power of attorney to convey all his real estate in the same locality. The term of three years mentioned in the *contre lettre* was continued by mutual consent. The vendor subsequently paid amounts on account of his general indebtedness to the purchaser. It was only after the purchaser's death that the vendor claimed from the heirs of the purchaser the balance, above mentioned, of \$1,470, as owing to him for the management of his properties.

Held, reversing the judgment of the Court of Queen's Bench, and restoring the judgment of the Superior Court, that the proper construction of the contract was to be gathered from both documents and dealings of the parties, and that, the property having been deeded merely as security, it was not an absolute sale, and that the plaintiff was not M. S.'s agent in respect of this property.

Held, also, that the only action the plaintiff had was the *actio mandata contraria*, with a tender of his *reddition de compte*.

Appeal allowed with costs.

Geoffrion, Q.C., and *Buchan* for the appellants.

H. B. Brown, Q.C., for the respondent.

Quebec.]

[March 1.

ARPIN v. MERCHANTS BANK.

Appeal in matter of procedure—Art. 188, C.C.P.

A judgment of the Court of Queen's Bench for Lower Canada (appeal side) held that a *venditioni exponas* issued by the Superior Court of Montreal, to which court the record in a contestation of an opposition had been removed from the Superior Court of the district of Iberville, under Art. 188, C.C.P., was regular.

On an appeal to the Supreme Court of Canada,

Held, that on a question of practice such as this the court would not interfere, following the course of the Privy Council as laid down in the *Mayor of Montreal v. Brown* (2 App. Cas. 184).

Appeal dismissed with costs.

Lajoie for the appellant.

Campbell for the respondent.