

Kerr (representing *Mr. Devlin*), for the prisoner.

[The same order was made on the same day in the case of *Regina v. Dunlop*, in which a question of law had also been reserved by *Drummond, J.*, before trial.]

SUPERIOR COURT.

LEMOINE *v.* LIONAIS.

June 27th, 1866.

Action to rescind Deed of Sale and Transfer.

Held, that the Court will not proceed to adjudicate upon a demand to annul a deed of sale, where persons interested in such deed have not been made parties to the suit.

That although open possession for a period slightly falling short of the term necessary for prescription is not a legal ground of defence to an action to rescind the deed of sale under which the property has been held, yet a presumption of good faith on the part of the possessor arises from it, which may be regarded in the decision of the case.

That where the sale is made by husband and wife, a *contre lettre*, passed after the sale, between the purchaser and the husband only, which does not contain anything injurious to the interests of the wife, is not illegal.

That a deed of sale cannot be rescinded on the ground of *lésion*, where the amount of the consideration, and the actual value of the property at the time of the execution of the deed, are not fully established.

The facts of this case which has been in litigation for ten years, are set forth in the judgment.

Monx, J. This is an action brought to set aside a sale of certain property, on the 30th October, 1846, from Mr. and Mad. Regnier to Mr. Lionais, the defendant. The plaintiff sues as the *cessionnaire* of Mad. Regnier's rights. He waited till the 29th October, 1856, ten years *less one day* after the sale, and then brought his action. In reading over the allegations of the pleadings, it is painful to contemplate the tone and the force of the language employed, by which fraud, force and violence of every description are charged against Mr. Lionais. It is alleged that he conspired with Mr. Regnier, a profligate husband, to use every means for the purpose of stripping the wife of the latter of all she possessed. It is painful to see a fellow-citizen accused of such monstrous conduct.

The first question is whether the authorization by Mr. Regnier of his wife in the deed of 1846 was void or not. On this question I have, after due examination, come to the conclusion that the authorization given by Mr. Regnier to his wife was perfectly legal. The next question is whether there was any fraud in the deed. I have looked into this question with a great deal of care, and I find no evidence whatever of fraud except in the evidence of Chamilly De Lorimier, Mad. Regnier's son-in-law. Mr. Lionais has been subjected to a cross-examination, unparalleled in my experience for its length and minuteness, going, it may almost be said, into all the incidents of his lifetime; but there is very little in this that has anything to do with the case. As to the sale itself, it is certain that Mr. Lionais, who held certain claims against Mad. Regnier, pressed for payment. At this time Madame Regnier was a person of very considerable means. Though she owed a good deal of money, she had abundant means to pay her debts. She possessed valuable properties, and a large number of *bailleur de fonds* claims. Why, then did she not pay Mr. Lionais? Her son-in-law, Chamilly De Lorimier, a lawyer of long standing, and presumably of mature experience, stated the reason to be that her husband would not authorize her to take any steps to pay Mr. Lionais. Could she not have been authorized by a judge upon a summary petition? Mr. De Lorimier was aware of this, he said, but he did not want to interfere. Mr. Lionais, then, desirous of being paid, took some preliminary steps by *saisie-arrest*, &c., and this, it is said, was coercion. Then there were *pour parlers* and interviews extending over three or four months. Finally the sale in question from Mr. and Madame Regnier to Mr. Lionais took place. At this time Mr. Beaudry acted as the legal adviser of Mad. Regnier, but he and Mr. De Lorimier state that she agreed to the sale, because she wanted Mr. Lionais to protect her against her husband! Steps were taken to prepare the deed of 1846, now sought to be set aside. Mr. Beaudry, experienced in business and acquainted with law, as representing Mad. Regnier, drew up the deed, and Madame Regnier had it in her possession during several days. Mr.