

sary to use the formalities of any ordinary suit in demanding that, in virtue of the execution of the *retrait*, such judgment be declared executory (soit *déclaré commune avec*) against him. Such being declared, the judgment ordering *retrait* is executed against him; but this form is necessary for the execution *réelle*, otherwise it would no longer be a judicial but a military manner of execution."

Pothier, des *Retraits* No. 17: "The action is personal-real (*personnelle réelle*) because the law in burdening the stranger purchaser with this obligation, affects or charges at the same time, the *heritage* acquired by him, with the fulfilment of this obligation. The ownership of this property is merely transferred to him subject to the *retrait*, and he cannot consequently transfer it to others without his incumbrance (charges). *Nemo plus juris in alium transferre potest quam ipse haberet*. Therefore, as long as the right of *retrait* lasts, the *lignagers* can institute this action not only against the person who has purchased from their relative, but also any person to whom it may have since passed and in whose possession it is." And at No. 26: "The action is personal real, *in rem scripta*, and it follows the possession." No. 189, "When, before any demand *en retrait* has been made upon the stranger purchaser, he has alienated the *heritage* subject to the *retrait*, the *lignager* has the option of suing *en retrait* either the purchaser or the third person. This is a personal real action which arises from the obligation *ex quasi contractu* undertaken at the time of acquisition by the stranger purchaser towards the *lignagers*, to transfer his bargain to any one of them willing to accept it and abandon to him the *heritage*; it is to the warranty of this obligation that the law affects this *heritage*. This action, as personal, can be instituted against the stranger purchaser, who is the real debtor and who could not, by alienating the *heritage*, relieve himself of the obligation to abandon it to the *lignager* who might wish to exercise the right. This action, as *real*, can be instituted directly against the third party in possession, the *heritage* being by law subjected to the accomplishment of the obligation."

And at paragraph 190, Pothier says that when the defendant in a suit for *retrait* pleads that he has resold to a third person it is equitable that the plaintiff should be sent back to take his recourse against such third person (this applies to the case of *retrait lignager* where only a determinate piece of property is in