circumstances be considered as an act of good administration and be birding on the respondent.

It is not however on these grounds that I base my dissent from the judgment about to be rendered. It is on the broader ground, that the condition precedent on which the promise of sale was made, was not accomplished by the respondent within the specified delay, and the appellant has thereby been released from the obligation entered into to sell the property to the respondent in case he should fulfil his obligation. I would therefore reverse the judgment of the Court below, and dismiss the action of the respondent.

Ramsay, J. On the 7th December, 1874, the appellant entered into a deed with respondent, then a minor, but assisted by his father, one Roderick McLennan, by which he promised to sell to the respondent a certain farm for $1,200, on account of which he acknowledged to have received $500, and the balance was to be paid in sums of $100 and interest at seven per cent., the first of these instalments to fall due on the 1st of October, 1875, and the interest to be calculated from the 1st October, 1874.

The presence of the father at the passing of the deed was that he might undertake "to have his said son ratify these presents when he will come to the full age of one and twenty years."

The deed then went on: "It is especially covenanted and agreed, etc." (See clause printed above):

Duncan McLennan came of age in 1875, but never got possession of the farm under the provisions of this deed, but Roderick McLennan did, and remained in possession of the house at all events till June, 1880.

On the 6th May, 1879, the appellant and Roderick McLennan made a deed by which they cancelled the deed of promise of sale, and agreed that the $500 should be for the rent of the premises up to that time. The appellant then brought a suit to evict Roderick.

After the eviction of Roderick McLennan the respondent protested the appellant and demanded a deed for the farm tendering him $997.31 as for the capital of $700 and interest, and offering to supplement the same if need be.

The appellant agreed, it is alleged, to accept this offer if the seigniorial dues and taxes were paid, but without stating the amount. The respondent then wrote to the appellant, desiring to know the amount so due, but the appellant failed to declare the amount, and in effect did not make it known till the 10th March, 1881, at *enquête*.

Duncan McLennan then sued the appellant, repeating his tender, and demanding a deed, and to be put in possession of the farm.

The appellant met this action by five propositions: 1st. The instalments were not paid when due, and therefore the original deed became only a lease. 2nd There was no ratification when the respondent came of age. 3rd. The deed was cancelled according to the terms by Roderick, who as *prête-fort* had a right to cancel. 4th. That respondent has no interest in the farm. And 5th, that the tender was insufficient.

The first and third of these propositions alone appear to me to merit consideration. The ratification of the deed was in the interest of the appellant, and he had a right to require it of respondent so soon as he was of age, but not before. This is all the deed says. The appellant having contracted with Duncan has no right to raise the question of Duncan's interest in the way he has done. He may perhaps have some rights as against Roderick, and through him against respondent; but Roderick was not put *en cause*, and the matter, if any, is not pleaded. If respondent be right as to the first question, the tender appears to me to be sufficient for the reasons given in the judgment of the Court below.

If the third proposition be correct, and be applicable to a case like the present, it will be unnecessary to consider the effect of this curious deed. There can be very little question, I think, that the general principle invoked by the appellant is true. If A warrants (*se porte forte*) that B will do a thing, A binds himself to its performance; and this is equally true whether B at the time be *incapable*, or A acts without authority from B. Nor can it it be doubted, I think, that so long as the *choses sont entières*, A can discharge himself of his obligation by cancelling the deed. When, however, it appears that the *incapable* has paid or done something in execution of the contract I can hardly understand how any act of the warrantor or of the other party can set aside the deed *without reserving his rights*.

Of course, if the protest and answer are proved, it would strengthen respondent's case; for it would be an acquiescence in respondent's pretensions. But, speaking for myself, I do not think the answer is proved. It is not signed, (Art. 1209 C. C.) and I do not think any verbal evidence could be received under our law to establish a title to a property of this value.

Allusion was made to the case of *Munro & Dufresne*. This case is not in point. In *Munro & Dufresne* there was a mere promise of the refusal of certain property up to a certain day, that day having passed the obligation was at an end. I am not aware that an option of that sort, where nothing passed, was held to be of a nature to require a *mise en demeure*. It would be seriously inconvenient if it did.

I am therefore of opinion that there was no cancellation of the deed, and that Duncan McLennan's ratification was *en temps utile*. This seems to me to be the whole question, for the fact of Duncan McLennan being out of the country could not possibly destroy his rights. If he had a right to be put *en demeure*, this must be done, and a deed with an unauthorised person, as Roderick McLennan was, could not affect this right one way or the other. I am to confirm, and this is the opinion of the majority of the Court.

Judgment confirmed.

Doutre & Joseph for the appellant.

Davidson & Cross for the respondent.