

Vente, 679, 687.—L'acheteur peut après sommation, faite à l'acheteur pour le mettre en demeure, demander à son choix ou le paiement du prix ou la résolution de la vente: 6 Marcadé, p. 296. In England, an action like the present might be sustained by vendor, if the contract were executory but not an executed contract. Lord Ellenborough :—" If the buyer does not carry away the goods bought within a reasonable time, the seller may charge him warehouerroom; or he may bring an action for not removing them, should he be prejudiced by the delay.—But the buyer's neglect does not entitle him to put an end to the contract." 3 Camp. R. 425 :—" The Plaintiffs have resold and put an end to the contract and therefore can not be indemnified for the Defendant's non-performance, as by their own act they have divested themselves of the relation of vendors towards Defendant." Lord Denman :—" Having taken time to consider of our judgment, whither the vendor had not a right to regard, the sale as at an end, and reinvest the property in himself by reason of the vendee's failure to pay the price at the appointed time. We are clearly of opinion that he had no such right, and that the action is well brought against him. For the sale of a Specific Chattel on credit, though that credit may be limited to a definite period, transfers the property in the goods to the vendor, giving the vendor a right of action for the price and a lien upon the goods of they remain in his possession till that price be paid. But that default of payment does not reseinde the contract." 1 Queen's Bench R. 595;—This is the case of a sale of *Specifio* chattels, and the last authority bore upon it; for though the sale was on credit, yet the goods remained with vendor. There was no difference between a cash and credit sale, as respect the vesting of the legal title to property.

For the Plaintiffs it was submitted that a sale for cash in Lower Canada conveyed no right in the article sold to the vendee ere payment; and that even in such cases where the articles had been delivered the vendor would have his right of revendication to attach and recover them. Troplong, Pro. Hypo. No. 188. That such being the case, the Defendant had not acquired any rights in the articles; he had merely made a contract to buy, which he had broken, and consequently was responsible in damages for such breach, the measure of which damages was the difference between the price which he had contracted to pay and that which was obtained, together with the costs and charges of the second sale.

That in England, the course of proceeding which had been adopted by the Plaintiffs had been sanctioned in a number of cases even where the property had passed to the vendee. (Story on Sales, No. 436, and cases there cited.)

The Defendant in reply denied the proposition that a cash sale, not followed by payment conveyed no title. The non-payment gave to the unpaid vendor, a right to demand *La résolution de la vente*, but the property in the meanwhile had passed to vendee, and so much was it so, that he might resell to a third person.

Mr. Assistant Justice Taschereau, after stating the facts of the case, said, that it had been pretended by the Defendant that the effect of the adjudication had been to vest the property in him, and he had cited in support of his position an authority (1 Queen's Bench, R. 595) which was not analogous: there the vendor had given credit; here the condition was cash on adjudication; there