

previous to the sale;—C. C. P. 652. I am of opinion that nullities or informalities as to the *délaissement* cannot be invoked under C. C. P. 714. The lapse of time is a waiver of informalities before the sale. Petition dismissed with costs.

Rinfret for petitioner.

Lareau for plaintiffs contesting.

SHUTER V. SAUNDERS.

Lease—Refusal of tenant to take possession on ground of unsanitary condition of premises.

TORRANCE, J. The action was to recover one month's rent to 1st August, \$26, and \$78 for the quarter ending 1st November. A lease was alleged to exist for ten months and two years, beginning the 1st July, 1879. The sole question was, as to whether the house was ready and habitable on 1st July, when the defendant covenanted to receive it. The defendant refused it on sanitary grounds. The chief witnesses were John William Hughes, and Isaiah C. Radford. Defendant said he wanted a house with good drains, and Hughes was applied to by defendant to report on its condition, and he reported that it was in a proper condition on the 30th June. The defendant also made inquiry of Radford, who was sanitary inspector for the city, and his report as to its condition on the evening of the 30th was unsatisfactory. Hughes was employed to put the house in order, so as to satisfy reasonable requirements. A drain was out of order which ran under the kitchen floor, and it was replaced on the 30th June so as to satisfy the requirements of the inspector of drains, Lowe. There was evidence that Hughes terminated his work on the morning of the 30th June. Radford examined the house at the request of Hughes on the 28th June, and again on the 30th, which was a Monday, and his evidence was that on Monday afternoon, at 5 p. m., there was fecal matter about the drain-pipe, stinking earth, I presume the result of the old broken pipe, which rendered it impossible for him to say that the house was then in a good sanitary condition. Hughes, in cross-examination, answered the defendant's counsel with the remark that the house was in a good sanitary condition for an average Montreal house. Radford visited the house again on the 25th July, and the offensive fecal matter had then

disappeared and had been replaced by ashes. When it was removed is not clear or made to appear. As to the requirements of an ordinary Montreal house, the opinion of Radford is poor, and he said such requirements would not be a good sanitary condition. The Court cannot on the evidence say that the evidence proves that the house on the 1st July was in a condition in which the defendant was bound to receive it under his agreement. The action is dismissed.

A. & W. Robertson for plaintiff.

Macmaster & Co. for defendant.

McNICHOLS es qual. v. BADEAU es qual., and
THE CANADA GUARANTEE CO., T. S.

Admission in declaration of garnishee.

The plaintiff was a judgment creditor of Badeau in his quality of curator to the vacant succession of the late Alphonse Doutre, and lodged an attachment in the hands of the Canada Guarantee Company. They declare that they had in their hands a sum of \$570.24 belonging to the succession of Alphonse Doutre but that they held it as a special security to secure them against any claims which might be brought against them under certain bonds given by them to the Queen, whereby they guaranteed the good conduct of the said Doutre in his office of assignee. This declaration was contested by the plaintiff, denying the allegation of suretyship.

TORRANCE, J. The only proof in this matter is the declaration of the company, which cannot be divided. *Molson v. O'Brien*, 21 L. C. J. 287. The contestation is dismissed.

R. & L. Laflamme for plaintiff.

J. C. Hatton for the Canada Guarantee Co.

BOURGOIN et al. v. THE MONTREAL, OTTAWA &
OCCIDENTAL RAILWAY CO.

Summons—Service upon Company—Proof made by bailiff's return.

It was understood that this action should be dismissed following the decision of the Privy Council in England, but the plaintiffs contended that the exception *à la forme* had to be dismissed. The defendants filed it on the 31st May, 1878, contending that the service of the writ and declaration on the 17th May, speaking to and leaving the papers with one of the em-