"Considérant que la demanderesse au lieu d'exercer son action personnelle contre le défendeur, a pris contre lui une action hypothécaire pour une partie de tout ce qui lui était dû, savoir pour la somme de $13,603.81;

"Considérant que sur cette action le défendeur a délaissé l'immeuble hypothéqué à la réclamation de la demanderesse;

"Considérant que le dit délaissement est encore en vigueur;

Considérant qu'après le dit délaissement, les choses n'étant plus entières et dans le même état, la demanderesse ayant, par son fait, obligé le défendeur à délaisser l'immeuble, sur une action hypothécaire pour un montant plus considérable que celui dont il pouvait être responsable personnellement, ne peut en loi exercer maintenant un recours personnel contre le dit défendeur;

"Maintient l'exception plaidée par ce dernier et déboute la demanderesse de son action avec dépens."

Sir A. A. DORION, C. J., (*diss.*) was of opinion that the judgment was erroneous. What Geriken said was not a defence to the action. He said that he and his associates had been sued hypothecarily, and they had *délaissé* half the property. This was no defence, or at most it would be a defence only for a proportion equivalent to the part abandoned. He ought to be able to say that he had abandoned the whole.

RAMSAY, J., (*diss.*) concurred with the Chief Justice. On the 14th Oct. 1874, Mrs. Reeves sold to Quesnel the south of lot 4679, and Mrs. Cadieux sold him the north of the same lot. On the 17th Oct. 1874, Quesnel sold to Geriken, Laframboise and Robitaille three-fourths undivided of both properties. On this last sale Quesnel received $22,246.87, leaving due $27,365.63, which the purchasers promised to pay for Quesnel to Mrs. Reeves with interest, in certain instalments arranged to meet Quesnel's liability. Mrs. Reeves, who was not a party to the last deed, sued these joint proprietors hypothecarily for Quesnel's debt, and they made a *délaissement*. Subsequently Geriken was sued under the delegation, and he pretended that having been obliged to *délaisser* a portion of the property, he cannot be sued for any portion of the money.

This is evidently a proposition that cannot be sustained. They have only been evicted from one half of the property, and they still hold the other half. It cannot, therefore, be seriously argued that it is an answer to Quesnel, or to Reeves who is in Quesnel's rights, that he has been evicted from the other half. The least respondent would have to do would be to say, "I have been evicted from a certain proportion of the property, and I only owe you a certain proportion of the price which I have paid you."

But the proposition of respondent is not so favourable as this. It is true he has been evicted, but for what cause? For his own debt which he promised Quesnel he would pay to Mrs. Reeves. If he did not do so, he was evicted for his own fault, and he certainly could not set up his own neglect in answer to a demand from Quesnel. But, it is argued that Mrs. Reeves has, by her own act, destroyed her right to sue under the delegation. That as she has brought an hypothecary action, she has chosen to give respondent the option to *délaisser*, and that he having done so at her suggestion, he cannot be sued personally. The authority of Troplong is quoted in support of this proposition, but in spite of the weight due to the opinion of so celebrated a writer, I cannot adopt this view. In the first place, Appellant did not evict Geriken. She summoned him to give up her *gage* in order that it might be sold *en justice*, and that she should be paid from the proceeds. It was no more an eviction than if she had seized the land in execution of a judgment for one instalment. Surely that would not have prevented her recovering for another instalment. The sale of the *gage* does not cancel the original debt unless the proceeds of the sale pay the creditor off. Secondly, I know no rule of law that declares that the personal debtor may not be sued hypothecarily.

There is one other question—that he was evicted for the debt of another. He was evicted for his own debt and that of his *co-obligés*. They were sued together and all have *délaissé*. I would reverse.

CROSS, J., held that by the institution of the hypothecary action, and the *délaissement* thereupon made by Geriken, he ceased to be personally liable. The appellant by bringing the hypothecary action, had put Geriken in a worse