

first action:—*Held*, that there was *chose jugée*. 2. In a question of *chose jugée*, the *dispositif* only of the first judgment can be taken into account. The *motifs* of the judgment can be considered only for the purpose of explaining obscurity or ambiguity in the *dispositif*. And, even if the *motifs* could be looked at in the present case, the plaintiff would have no action, because the Courts, in the first action, held that there had been novation of the debt, and it was not alleged or proved that a second novation had taken place. *Canadian Breweries Limited v. Alard*, 24 Que. S. C. 515.

Division Court action — Settlement before trial—No bar to subsequent action. *Williams v. Cook*, 1 O. W. R. 133.

Identity of actions — Judgment dismissing action against surety — New action against principal.—An exception based upon *res judicata* is well founded when the plaintiff sued for the same relief, for the same cause, in a new action against the same defendant as principal, after the dismissal of a former action against him as surety. Therefore, a judgment dismissing an action for the recovery of money lent against a married woman and her surety, on the ground of the contravention of Art. 1301, C. C., may be set up as *res judicata* by the surety or his representative in a second action in which the plaintiff claims the same sum as actually lent to the surety and to the husband of the married woman, alleging that the latter had by fraud caused the memorandum of the loan to be subscribed as if it was the act of the married woman, and it was they who had received the money lent and had the benefit of it. *Sutherland v. Lafontaine*, 31 Que. S. C. 431.

Mining law—Declaration in judgment.] —When the full Court varied the judgment of the trial Judge dismissing an action to "adverse" a mining claim, by expressly excepting from the judgment "any declaration affecting the title of either party to their respective mineral claims," the parties were, by implication, left in the same position as they stood before the action was brought, and therefore the subject-matter was not *res judicata*. *Dunlop v. Haney*, 7 Brit. Col. L. R. 207.

Opinion of Court on case stated by Government.] — The opinion given to the government by the Court of Appeal upon a question referred to the Court under 61 V. c. 11, is an opinion only, and cannot make a point passed upon *res judicata*; and is not even a compromise, a transaction, nor an arbitration, inasmuch as the question referred to the Court of Appeal is not by the consent of the parties, put upon the sole initiative of the government. *Galindez v. The King*, 26 Que. S. C. 171.

Premature action — Second action — Mortgagee — Purchaser's covenant — Assignment of.] — A mortgagee had taken an assignment from a mortgagor of the covenant of a purchaser of the equity to pay off the mortgage, and had, on receiving certain securities, agreed with the purchaser

not to sue him until certain other remedies were exhausted, and had been unsuccessful in a suit against the mortgagor, on the ground that the remedies were not exhausted: *Barber v. McCaig*, 24 A. R. 492, 17 C. L. T. 280; 29 S. C. R. 125, 19 C. L. T. 52. In a second action on the same covenant:—*Held*, that the Court may properly examine the pleadings, evidence, and proceedings at the trial of the former action, and that the reports of the reasons given for the judgments may be looked at for the purpose of ascertaining what the law is. That the dismissal of an action on the ground that it was prematurely brought, is no bar to another action on the same demand after time has removed the objection. And that the mortgagee, having exhausted her remedies by which she was placed in the same position with respect to him as she was before she received the securities, was entitled to recover notwithstanding that she had retransferred the securities to him and agreed not to sue on his covenant; but the latter agreement was not to apply to the mortgagor, in case the purchaser's covenant was reassigned to him. *Barber v. McCaig*, 20 C. L. T. 102, 31 O. R. 593.

See ACCOUNT — APPEAL — ASSESSMENT AND TAXES — CHAMPERTY AND MAINTENANCE — FRAUDULENT CONVEYANCE — LANDLORD AND TENANT — MASTER AND SERVANT — PUBLIC MORALS — PARTITION — PRINCIPAL AND SURETY.

RESCISSION.

See CONTRACT — FRAUD AND MISREPRESENTATION — LANDLORD AND TENANT — SALE OF GOODS — VENDOR AND PURCHASER.

RESCISSION OF CONTRACT.

See VENDOR AND PURCHASER — WRIT OF SUMMONS.

RESCISSION OF LEASE.

See LANDLORD AND TENANT.

RESCISSION OF SALE.

See VENDOR AND PURCHASER.

RESERVATION OF RIGHTS.

See BILLS OF EXCHANGE AND PROMISSORY NOTES—LIMITATION OF ACTIONS.

RESERVE FUND.

See COMPANY.