

The Legal News.

VOL. III. OCTOBER 30, 1880. No. 44.

MORTGAGE FOR FUTURE ADVANCES.

An interesting question was decided a few days ago by Mr. Justice Mackay in the case of *Quintal v. Lefebvre*. One Benoit had bought a property without registering his title. He granted a hypothec on this property to a Building Society for advances to be made. This hypothec was registered. Benoit then sold the property to the defendant Lefebvre, delegating part of the price to Trudeau. This deed was also registered. It was after all these transactions that Benoit's purchase deed was registered, and subsequently the Building Society made the advances.

The question was whether Trudeau was to be preferred to the Building Society on the proceeds of the immoveable hypothecated. The registration of these two claims took effect only when Benoit's acquisition deed was registered; for, under C.C. 2098, "so long as the right of the purchaser has not been registered, all conveyances, transfers, hypothecs or real rights granted by him in respect of such immoveable are without effect." Then, when the registration was validated, the Building Society's hypothec, being the more ancient deed, would apparently have precedence. But the Building Society did not really become a creditor at all until after the registration of Trudeau's claim had obtained its effect. So the question resolved itself into this, from what time does a hypothec for a *crédit ouvert* work,—from the day of its date, or from the time the advances are made? The judgment of distribution assumed, apparently, that it had effect only from the date of the advances, but Mr. Justice Mackay has overruled this mode of ranking, and has given effect to the Building Society's deed from the day of its date. It is probable that the question will be examined by a higher Court.

UNREGISTERED HYPOTHECS.

The case of *In re Peloquin*, and the contestation arising upon the distribution of the proceeds of the insolvent's real estate, has directed attention to the fact that in certain

localities there are privileged claims yet in existence not requiring registration or re-registration. The City of Three Rivers has such a privilege for securing repayment to it of money loaned to persons whose property was destroyed in the great fire of 1856, to enable them to rebuild.

PUNISHMENT FOR CONTEMPT.

The Supreme Court of Pennsylvania, *in re Steinman*, has recently had to review a decision of a Judge of Quarter Sessions, disbarring an attorney for publishing a libellous letter in a newspaper of which he was the editor or publisher. The Court has set aside the sentence and very properly so. It appears that Judge Patterson, who was the magistrate libelled, not only undertook to punish the contempt against himself, but because the offender happened to have a dual quality of newspaper publisher and attorney, he punished him in the latter capacity by suspension from practice, for an offence committed by him as a publisher. This was held to be clearly unjustifiable, although in Pennsylvania the Court has power to suspend or remove an attorney who "misbehaves himself in his office of attorney." His duty in his office of attorney, as embraced in the terms of his oath, is "to behave himself in the office of attorney according to the best of his learning and ability, and with all good fidelity, as well to the Court as to the client." The publication in question, although undoubtedly a libel, was not misconduct in the attorney's professional capacity and could not be punished by expulsion. But the Supreme Court seemed to approve the principle which had been laid down in another case, that such publication might be a breach of professional duty where the motive clearly was to acquire an influence over the judge in the exercise of his judicial functions, by the instrumentality of popular prejudice.

This case reminds us of one which made some stir in Nova Scotia a good many years ago. We refer to the case of Wallace, a barrister, who was punished by the Supreme Court of Nova Scotia with suspension for contempt. The contempt consisted in a letter addressed to the Chief Justice, reflecting on the judges and on the administration of justice in the Court. It appeared, however, that Wallace complained