

tutrice aux enfants mineurs issus de son mariage avec le dit feu Joseph Moquin, et les intimés en cette cause, ont vendu à Siméon Beauvais un immeuble situé à Laprairie, dépendant de la succession du dit feu Joseph Moquin, leur père, la part des intimés consistant en un sixième pour chacun dans la moitié indivise du dit immeuble;

"Et considérant que les dits intimés n'ont pas prouvé qu'ils ont signé le dit acte de vente par erreur;

"Et considérant que par la dite vente les dits intimés ont accepté la succession de leur père, et que la renonciation qu'ils ont faite plus tard n'est d'aucun effet;

"Et considérant que les intimés ayant ainsi accepté la succession de leur père, ne peuvent réclamer le douaire coutumier créé par le mariage du dit feu Joseph Moquin, avec feu Elmire Lecompte, leur mère;

"Et considérant qu'il y a erreur dans le jugement rendu par la cour supérieure siégeant à Montréal, le 9 Juillet 1879;

"Cette cour casse et annule le dit jugement du 9 Juillet 1879;

"Et procédant à rendre le jugement qu'aurait du rendre la dite Cour Supérieure, renvoie l'action des dits intimés, avec dépens, tant ceux encourus en cour de première instance que sur cet appel."

RANSAY, J. I concur in the judgment rendered but for reasons somewhat different from those just expressed. I think that error of law on the part of Joseph Moquin was as fully established as want of knowledge can be. It is one thing to say error of law is difficult to prove, and another to say that the legal effect of ignorance does not exist. It is, however, unnecessary in this case to enter into the general question of error of law, because an article of our Code, (art. 650 C. C.) declares that error of law alone does not relieve any one from an acceptance of a succession either express or implied. There must be *fraud*. This, I fancy, would have been the proper interpretation of the law even without the article. The rule of our Code as to error (art. 992 C. C.) even taking the view of the French commentators that "error" implies error of law as well as of fact, only applies to contracts, subject to the two limitations of articles 1245 C. C. & 1921 C. C. Where there is no special article, as with regard

to the *condictio indebiti* (art. 1047 C. C.) the old law applies, and by the old law, as a general proposition, error of law did not excuse the erring party, and specially could not relieve the heir from an acceptance of the succession. The respondent was fully aware of this, for he pleaded fraud, which I think he has failed to prove. There can be no question that the act referred to was an *acte d'héritier* and one of the most formal kind.

Girouard & Wurtele for Appellant.

Geoffrion, Rinfret & Dorion for Respondent.

RECENT DECISIONS—PROVINCE OF QUEBEC.

Procedure—Folle-Enchère. — 1. In a rule for *contrainte par corps* against a *fol adjudicataire*, to compel payment of the loss occasioned by the resale of the property originally adjudged to him, it is not necessary to describe the property.—*Delisle v. Sauche & Sauche, fol adjudicataire*, (Court of Review, Montreal).—26 L. C. J., p. 162.

2. Personal service of such rule is not necessary, personal service of the motion for the rule being sufficient.—*Ib.*

Marriage contract—Hypothec—Registration—Procedure.—1. A stipulation in a contract of marriage, whereby the future husband gives a life rent to the future wife, in consideration of the renunciation by her to all right of community of property and dower and to all other matrimonial rights, is not a donation requiring to be registered during the lifetime of the donor.—*Chisholm et al. v. Pauzé et qual., & Robertson*, opposant, (Superior Court, Montreal), 26 L. C. J., p. 162.

2. A hypothec granted by a seignior on his *fief* and seigniori (described by its contents and boundaries) prior to the date of the publication of the notice of deposit of the *cadastre* thereof, created a good and valid hypothec on all lands in such *fief* and seigniori held and owned by said seignior.—*Ib.*

3. The registration of such hypothec after the publication of the notice of deposit of said *cadastre*, was valid and preserved the hypothec so created as aforesaid.—*Ib.*

4. Such hypothec on said lands was not affected by the failure of the mortgagee to file an opposition as required by ch. 40 of the Consolidated Statutes of L. C., sec. 41.—*Ib.*