declaration cannot give authenticity to such an answer, it is clear that it cannot be proved by witnesses, as the respondent has attempted to do, for such evidence would be a clear violation of art. 1233 of the Civil Code;—even if such evidence was admissible, it is clear from what transpired on the occasion referred to, that no new agreement was entered into between the parties, and neither the tender nor the action are predicated on any such new agreement.

The deed of the 7th December, 1874, merely conveys to the respondent the right to occupy the farm in question, as the tenant of the appellant, coupled with a promise of sale on the part of the appellant, should the respondent pay regularly within the time specified the several instalments of $100 each and interest to complete the stipulated price of $1,200, and the respondent having failed to pay any of the said instalments, his right to claim a deed of sale has lapsed. And in the view I take of this case, it is quite immaterial whether the lease or license of occupation precedes or follows in the deed, the promise of sale. It is said, however, that there could be no lease as there was no rent fixed. This is not correct, for art. 1605 specially provides that persons holding real property by sufferance of the owner, without lease, are held to be lessees, and bound to pay the annual value of the property. This shows that there can be a lease without any agreement as to the amount of the rent, which in such case is to be determined by the annual value of the property leased. It is not necessary to decide here whether the five hundred dollars paid by the respondent are altogether lost to him, or if as is more likely, they are forfeited only to the extent, as it seems to have been intended, of the annual value of the property during the time the appellant was deprived of it; the action not being to recover any portion of these $500, but to recover the property itself.

Even if the condition as to the payment of the price could be considered as a revocatory condition, it could not avail the respondent to compel the appellant to grant him a deed of sale, for according to the authority of Pothier, No. 480, already cited, it was not necessary under the circumstances of the case, that the appellant should have obtained a judgment discharging him of his obligation. This author says, that if a long time has elapsed, a presumption may result that the parties may have tacitly desisted from their stipulation. In the present case, the appellant has been nearly five years without ratifying the promise of sale, as he was bound to do, to avail himself of its conditions; he almost immediately after becoming of age, left the country without any intention to return, and has since resided abroad; he never fulfilled any of his obligations, and has paid none of the six instalments that became due before the institution of the present action, nor any part of the interest accrued thereon: he did not even pay the ordinary municipal and school taxes and the seigniorial dues which were payable on the property. The only party whom he left in possession of the farm, was his father who from all the circumstances, seems to have been the party really interested in this promise of sale, since the $500 paid appears to have been provided for by him, and he is the party who having promised to have the deed ratified by his son, and who was left in possession of the farm, has consented to the resiliation of this promise of sale, and has delivered the property over to the appellant. If there is any case in which a party may be presumed to have desisted from a promise of sale, without requiring an adjudication to that effect from a Court of Justice, it is certainly in a case like this where the party has withdrawn permanently from the jurisdiction of the courts which he now invokes, and by his own conduct, has rendered it almost impossible except at a great sacrifice, to obtain that order of cancellation which he alleges, was necessary to deprive him of his pretended right to claim the property from the appellant, notwithstanding his own laches. If his claim is valid now, why should it not still be valid after twenty-nine years' absence, when the property might have doubled and trebled in value and when the appellant to protect it, would have been compelled to disburse large sums of money, or might have parted with it in good faith? The equitable rule laid down by Pothier, seems to have a special application to the circumstances of the present case.

The respondent may possibly claim that in leaving the country, he has not abandoned the possession of the property, but left it in charge of his father. In that case, the father would have been his constituted agent, and the abandonment which he made to the appellant, would under the