### *DUPUY & DUCONDU.*

The real issue in the case of *Dupuy & Ducondu*, was as to whether in a deed of sale of a mill, four arpents of land and certain Crown timber limits, in recognition of a promise of sale, which deed of sale contained a special warranty grammatically applicable to the property sold as well as to the limits, there being no such warranty as to the limits in the promise of sale, the warranty was binding as to the limits, and whether it should be read as applying to them.

By the nature of the contract conceding Crown timber limits there is no warranty; and there was no new consideration for the special warranty. The Court of Queen's Bench held, that the *titre-nouvel*, under the circumstances, must be read subject to the conditions of the original document, and that the warranty was not binding.

The Supreme Court (Henry & Gwynne, JJ., *dis.*, Taschereau, J., not sitting) held that the warranty was binding.

Pothier says in deciding a very analogous case :—"Le tiers détenteur d'un héritage hypothéqué à une rente ne devant, pour éviter le délai, s'obliger à la rente que tant qu'il est détenteur, si, par l'erreur du notaire, (comme il arrive assez souvent), il était dit purement et simplement qu'il s'oblige à la rente, il serait néanmoins présumé s'y être obligé seulement pour le temps qu'il serait détenteur."

"Il y a plus, quand même le titre nouvel porteroit formellement qu'il s'est obligé à la continuation de la rente pour toujours, et tant qu'elle auroit cours, *on présumeroit encore favorablement que ces termes se seroient glissés par erreur, et par style de notaire, parce qu'on croit difficilement qu'un homme ait voulu s'obliger à plus qu'il ne doit, à moins qu'il ne parut quelque cause pour laquelle il aurait augmenté son obligation, et se serait ainsi obligé à payer la rente indéfiniment, et tant qu'elle aurait cours.* Puta, s'il avoit reçu quelque chose pour cela, qu'on lui eut remis des arrérages. C'est le sentiment de Loyseau, Liv. 4, ch. 4, 15 and 16." Tr. des Hyp., ch. ii. Art. iii., p. 444, 4to Ed. Pothier.

It is a pity it was not the sentiment of the Supreme Court, as it is that of Loyseau and Pothier, and as it is the suggestion of reason and equity. Of late we have heard it whispered that French Canadians were alone eligible to the Supreme Court, as representing Lower Canada, and that this was necessary for the protection of the French law. It is a rule naturally popular with the favored class, independent of any idea of necessity, although it is an administrative truce of more than doubtful respectability. It is somewhat curious to note that, in this case, the principle of the civil law should be recognized by two judges, one from Halifax the other from Ontario, while it was totally ignored by one of its specially appointed protectors. Immoral compacts cannot have good results. Figs cannot be gathered from thistles. R.

### *LIABILITY OF TELEGRAPH COMPANIES.*

The case of *Watso* v. *The Montreal Telegraph Co.*, noted in the present issue, presents an interesting question as to the liability of telegraph companies. As in the case of *Bell* v. *The Dominion Telegraph Co.* (3 L. N. 405), the action was brought by the person to whom the message was addressed. In the *Bell* case, however, the telegram was never delivered at all; in the *Watso* case an error of transmission was complained of. In the *Bell* case, the fact that the message was not repeated did not affect the result, because it was failure to deliver, and not an error of transmission, that occasioned the damage. In each case the Court found that the company was in fault, and that the limitation of liability was not valid.

The decision in these cases rests upon articles of our Code, but it is interesting to notice that the jurisprudence in the United States is in effect similar. In a case quite recently decided by the Supreme Court of Ohio, *Western Union Telegraph Co.* v. *Griswold* (reported in the last issue of the *Albany Law Journal*, p. 190), the Court bases its judgment squarely upon the principle that immunity from liability for loss occurring through negligence cannot be validly stipulated. The holding of the Court is to the following effect:—While a telegraph company may, by special agreement, or by reasonable rules and regulations, limit its liability to damages for errors or mistakes in the transmission and delivery of messages, it cannot stipulate, or provide, for immunity from liability, where the error, or mistake, results from its own negligence. Such a stipulation, or