

The Legal News.

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DALLAIRE AND GRAVEL.

The question decided by the Court of Appeal in this case (p. 15), is one of considerable importance in the law of real estate. The facts were very simple. Dallaire acquired a certain immoveable during his marriage, and the property became a *conquête* of the community which existed between him and his wife. The latter died in 1870, leaving six children of the marriage. Five years after the death of his wife, Dallaire hypothecated the immoveable in question as security for a loan of \$600 which he effected at the time. The hypothec was given on the whole property and was duly registered. The hypothecary creditor being about to bring the property to sale, under a judgment which he had obtained against Dallaire, Emélie Dallaire, one of the six children, came in by opposition, and claimed a sixth of one half of the immoveable, as heir-at-law of her deceased mother. The creditor contested the opposition, alleging that the father had remained the apparent proprietor of the immoveable, and that the opponent, not having caused the transmission by succession to be registered, as required by Art. 2098, had lost her right as against the holder of a duly registered hypothec.

The terms of Art. 2098 are as follows:—
“The transmission of immoveables by succession must be registered by means of a declaration, setting forth the name of the heir, his degree of relationship to the deceased, the name of the latter, the date of his death, and, lastly, the designation of the immoveable.” And the clause which follows says:—“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.”

The question, then, was whether the heir, who, it must be remarked, did not derive her title from the same person as the hypothecary creditor, was deprived of her right by the failure to register. If she was not, then the registrar's certificate, showing the property to be free

from all claims, was calculated to mislead. And on the other hand, if the heir was cut out from her right, then it would follow that the act of the father in hypothecating property which did not belong to him, might deprive his children of the inheritance coming to them from their mother. The Court of Appeal decided that the heirs were not deprived of their share in the immoveable, and that the penalty of failing to register the transmission by succession is not the loss of their right, but merely that conveyances, transfers, hypothecs, or real rights granted by them in respect of the immoveable are without effect.

THE ENGLISH CRIMINAL CODE.

The draft of the new criminal code has been under the consideration of commissioners, appointed at the end of last session, and the amended draft will probably be laid before the House of Commons at an early date. The steps taken in England towards codification have been watched with considerable interest in the United States and Canada, and we give our readers elsewhere an article written by an experienced lawyer of the former country, in which several features of the proposed code are discussed and criticized.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, December 20, 1878.

MACKAY, J.

BETHUNE et al. v. CHARLEBOIS.

Rentes Constituées—Prescription—Parole Testimony.

Held, that arrears of *rentes constituées* are prescribed by five years.

2. That renunciation to such prescription cannot be proved by parole testimony, when the amount demanded is over \$50.

MACKAY, J. This is a suit by the owners of the seigniory of Rigaud against a tenant of land there for \$126.24 due up to 29th September, 1877, inclusively, of *rentes constituées*, representing the abolished *cens*, sixteen years