

poration books they are valued at \$12,600. The pretended purchasers have not the full title to them. The vendor even has not the full title. So what remains after the payment of the respondent's hypothec and interest? Absolutely nothing. We do not think a party can dispossess himself of his property to qualify sureties.

Petition granted: no objection below, and therefore no costs here; appellant ordered to give new security within fifteen days.

Pelletier & Jodoin, for appellant.

Judah & Branchaud, for respondents.

BOARD OF TEMPORALITIES, &c., v. MINISTER and TRUSTEES of ST ANDREW'S CHURCH.

*Service upon President, Secretary or Agent—
Appeal—Attorney.*

Service upon a President, Secretary or Agent, under C.C.P. 61, may be made either personally on the officer or at his domicile.

A motion for leave to appeal may be made, without a substitution, by one of the appellant's attorneys of record in the Court below.

An appeal may be granted from an interlocutory judgment dismissing an exception to the form.

Motion for leave to appeal from judgment dismissing *exception à la forme*.

The service of the action was at the domicile of the President and at the domicile of the clergyman. The defendant contended that the service must be at the office of the Corporation, or elsewhere on the President, Secretary or Agent personally, art. 61, C.C.P.

The plaintiff contended. 1. That the motion was signed by Mr. Macmaster alone, and that the attorneys were Messrs. McMaster, Hall and Greenshields. 2. That the judgment was not appealable under art. 1116, C.C.P. 3. That the service was regular.

The Court held that the motion was sufficiently made by one of the attorneys. An appeal may be granted from an interlocutory judgment dismissing an *exception à la forme*. The general rule for service is that it may be made on the defendant personally or at his domicile. When service is allowed to be made on the President, Secretary or Agent, it is be-

cause he is assimilated to a defendant. Therefore, when the law says service may be made on him without saying "personally," the true interpretation is that it may be made on him in the same way that it may be made on any other defendant, that is personally or at domicile. The Court therefore thinks that the interlocutory judgment was correct and that leave to appeal should be refused. The case cited was before the Code and therefore is not binding on us, besides it seems to have been overruled in the case of *Valin & The Corporation of Terrebonne*.

Motion rejected.

D. Macmaster, for defendants moving.

J. L. Morris, for plaintiffs.

SUPERIOR COURT.

MONTRÉAL, Sept. 25, 1880.

JETTÉ, J.

LA COMPAGNIE DE PRET ET DE CRÉDIT FONCIER v. GARAND es qual, and HENEY et al., opposants, and PHILLIPS, contesting.

Resiliation of Sale—Registration.

Avant la promulgation du Code, le vendeur avait, sans stipulation à cet effet, le droit d'exercer l'action en résolution de vente faute de paiement soit partiel, soit total du prix, et même faute de prestation de la rente constituée représentant le prix. Ce droit de résolution peut être exercé par le vendeur, qui n'a pas fait renouveler l'enregistrement de son titre, à l'encontre des créanciers hypothécaires dont les droits sont régulièrement enregistrés. Le vendeur non payé, qui n'a pas exercé son droit de résolution avant le décret de l'immeuble, peut convertir sa demande en réclamation sur les deniers et être préféré aux créanciers enregistrés.

JETTÉ, J. Le 7 octobre 1856, le Dr. Turcotte agissant pour dame Léocadie Charlotte Heney, sa femme, a vendu à François Roussel, un emplacement situé à Montréal, et ce pour une somme de £40, pour laquelle l'acheteur a constitué en faveur de la dite dame Heney, ses héritiers et ayans cause, une rente annuelle et perpétuelle de £2 8 0. Il a été de plus stipulé qu'en cas d'aliénation de cet emplacement par l'acquéreur, le capital de la dite rente constituée deviendrait exigible, à moins d'obligation for-