l'eût accordée, parceque dans une autre cause cette permission a été accordée plus d'un an après jugement, et même cette permission a déjà été accordée après jugement semblable à celui présentement rendu.

Ge ffrion, Rinfret, Dorion & Laviolette for T. S. *R. & L. Laflamme* for plaintiff contesting.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before PAPINEAU, J.

McLAREN et al. v. KIRKWOOD, and BROOKE, petr. for writ of possession.

Sheriff's sale—Right of Purchaser to expel the Lessee.

The petitioner Brooke, had purchased at sheriff's sale an immoveable situate in St. Antoine ward, Montreal. Not being able to obtain delivery of the property, he demanded it of the sheriff (under C. C. P. 712), and the sheriff having given a certificate of the refusal to deliver, the petitioner now asked for a writ of possession. This petition was served upon the defendant, and also upon William Blackman, the lessee in possession.

The lessee, Blackman, opposed the granting of the order, on the ground that he had leased the property under a notarial lease, which being continued by *tacite reconduction* for one year, would not expire until 30th April, 1881; that the sheriff's sale had not the effect of terminating the lease, and he had a right to remain in possession until 1st May next.

The COURT granted the petition, referring, among other articles, to C.C. 1663: "The lessee cannot, by reason of the alienation of the thing leased, be expelled before the expiration of the lease, by a person who becomes owner of the thing leased *under a title derived from the lessor*," &c. C.C. 2128 says: "The lease of an immoveable *for a period exceeding one year* cannot be invoked against a subsequent purchaser unless it has been registered." These articles, it was held, did not apply to a sale by a sheriff. The lessee's right is personal and is to be exercised against the lessor, and when the latter ceases to have any right in the property, the lessee's right also comes to an end. The lessee no doubt is exposed to injury where the lessor becomes insolvent, as is usually the case when his property is sold by sheriff's sale, but this inconvenience is no ground for setting aside the law. Petition granted.

Bethune & Bethune, for petitioner.

Kerr, Carter & McGibbon, for the contestant Blackman.

SUPERIOR COURT.

MONTREAL, Jan. 31, 1881.

Before JOHNSON, J.

GRAND TRUNK RAILWAY CO. v. CURRIE.

THE SAME v. HALL et al.

Liability of purchaser to pay interest on purchase money when the property is mortgaged for a larger sum than the price due.

JOHNSON, J. The question raised in these two cases is whether the purchaser of real estate is bound to pay interest on his purchase money, when the property is mortgaged for a larger sum than the price due.

Art. 1535, C. C, says:—"If the buyer be disturbed in his possession, or have just cause to fear that he will be disturbed by any action hypothecary or in revendication, he may delay the payment of the price until the seller causes such disturbance to cease, or gives security; unless there is a stipulation to the contrary."

Here there is no stipulation to the contrary, therefore the purchaser is entitled to delay payment of the price until the plaintiff causes the mortgages to be erased. But the plaintiffs do not claim the purchase money. They claim payment of the interest thereon; and the question is whether a purchaser may delay payment of the interest as well as of the price itself. This is no new question. In France, whence we borrowed our article 1535, it seems to suffer no difficulty. Here there have been various decisions of more or less authority in various cases, but still the main principle seems never to have been shaken except in the case of *Dorion* v. *Hyde*, and though I myself sat in that case, I must say that in the light of subsequent decisions, I think it was wrong. That case occurred fourteen years ago, and the Judges who sat were the late Judge Caron, Judge Duval, Judge Drummond, and myself as Judge *ad hoc*. Certainly the reasoning of Judge Caron was very convincing then, but, as Judge Dorion said in *Hogan* v. *Bernier*, the reasoning is not supported by authority, and is opposed to authority.