

by the parties. The first is by defendant who contended, in a feeble manner, it seemed to me, that the plaintiff had lost her right to the *retrait* by having tacitly renounced, or having refused to accept from defendant, Henry's share when offered by him. This is a question of fact, and without hesitation we say, in accord with the Court *a quo*, there is not in the record sufficient proof to sustain this objection.

The second comes from the plaintiff; she complains of the judgment *a quo* upon an intervention, filed in the case by Henry Phillips, her co-heir and vendor, because while dismissing this intervention the Court below did not grant the costs thereof against the defendant. It suffices for me to say that we have time and again decided that we will never interfere with a decision as to the costs in a lower court unless under very special circumstances, which are not to be found in this suit.

I now will add, to the authorities already cited, those of general application which I have met with in studying the case. They are principally taken, it will be seen, from the authors on the *droit lignager*. The expression *droit successoral* is ignored in ancient French law, even in Bourjon where a passage, which I cite, nevertheless decrees it in unequivocal terms. But the rules of *retrait* are in general the same. And, as says L'Abbé (*loc. cit.*): "There is often much of value to be found in treatises on institutions that are now suppressed. For instance, *retrait lignager* is abolished, nevertheless the solutions given by our ancient authors, on the effects of this *retrait*, can be of service to us in deciding similar questions arising in our day respecting *retrait successoral*, *retrait* of litigious rights, and *retrait d'indivision*. They are, in reality, rights of the same nature and produce the same consequences." And the learned professor adds that in matters of *retrait successoral* he adopts as his guide Tirangeau's treatise on *retrait lignager*. And Demolombe, 4, des suc. nos. 6, 8, says, in the same sense, that one is justified, in matters of *retrait successoral*, in invoking the application of the principles which governed *retraits* in general in the ancient jurisprudence. Besides this doctrine is generally admitted, Bourjon, Vol. 1, p. 1053. "When a first purchaser has sold to a second . . . the *retrait*, although it reacts upon the second purchaser, is exercised against the first contract of sale and not the second." And at pages 105 *et seq.* "Notwithstanding the sale made by a first purchaser of a *propre*