

by the Superior Court, Montreal, Johnson, J., 30th May, 1877, as follows:—

"The Court, etc.

"Considering that the registration of the real rights, privileges and hypothecs of the plaintiffs in and upon all lots of land sold or alienated by the defendants or their *auteurs* as mentioned in the plaintiffs' declaration, was required by law, and was in fact made before 1866, and further that the renewal of the registration thereof, under the law in that behalf, at the costs and charges of the defendants, became and was necessary for the preservation of the said rights, as in the said declaration alleged;

"Considering that it appears by the evidence of record and by the written admissions of the defendants, that the latter failed to conform to the notice and requirement by the plaintiffs of the 4th April, 1871, and that therefore the plaintiffs have been obliged to make and register at their own cost the said notices of renewal of registration of their rights aforesaid, and that the cost of the same is \$1,238.80, which defendants are bound and liable to pay and refund them;

"Considering that the first plea filed by the defendants is unfounded in fact and in law, doth dismiss the said plea, and doth adjudge and condemn the defendants to pay and satisfy to the plaintiffs the said sum of \$1,238.80 currency, with interest thereon, from the 5th August, 1876, day of service of process in this cause, until actual payment, and costs of suit."

In rendering judgment, Mr. Justice Johnson made the following observations:—

"There was another case before me not very long ago similar to the present, as far as the nature of the plaintiffs' action is concerned, but in which the defendant did not raise the point that is raised here. I allude to the case of the same plaintiffs against Day, in which the question was whether the defendant was bound to pay the plaintiffs the cost of *titres nouvelles* and re-enregistration under the cadastral system, which the plaintiffs had been obliged to pay in consequence of Day's default. The question now is whether such registration is required by law; it was not suggested in Day's case that it was not necessary, but only that the emphyteotic lessee was not bound to pay for it. The ground taken by the defendants now is that by the

principles of the registration ordinance, reproduced in art. 2084 C.C., the original titles by which lands were granted *en fief, en censive, en franc alleu*, or in free and common soccage, are excepted from the necessity of registration. I still think, as I said at the hearing, that the present point was virtually included in the other case, for Day could not have been held to pay for the renewals of registration unless they were necessary. But I admit that that particular question received no attention in that case, not having been suggested, nor in all probability thought of. Therefore I look at the point on its merits; and the first thing seems to be to ascertain precisely what it is that the plaintiffs ask, because if they are asking that their title as *seigneures* of the fief Nazareth should be enregistered anew at the expense of the defendants, they would have no case. But they are asking nothing of that sort; they are asking that their hypothecs on hundreds of lots charged with *rentes foncières* created by the *cessionnaires* should be preserved—hypothecs for £3 on each lot, of which one-sixth belongs to them now, and the whole will belong to them at the expiration of 99 years. It is not therefore the title of the Hotel Dieu nor the title of the first lessee that requires to be registered anew. The admission of the parties shows that the action refers to deeds for lots of land in St. Ann's Ward of the city of Montreal, granted by defendants' *auteurs*."

"A very able and ingenious argument was made by Mr. Wurtele for the defendants, to show that in whatever form it may appear, the plaintiffs' right is in reality a *charge seigneuriale*; but the reason of the thing seems to be that *cens* are not prescriptible, and *rentes foncières* are. The public could know nothing of these hypothecs created by the parties without enregistration. Judgment for plaintiff."

MONK and TESSIER, J.J., dissenting, were of opinion that the judgment was correct, and should be confirmed.

RAMSAY, J. The defence in this case has been represented as being a great injustice to the respondents; that McCord had previously registered, and that he now refused to indemnify the respondents for the expense they had incurred. There is no hardship in the matter at all. McCord registered at his own costs to