

## NOTES OF CASES.

## SUPERIOR COURT.

MONTREAL, March 30, 1880.

RAWLEY v. MONARQUE, and QUINTAL, petr., and TRUST & LOAN CO., *mis en cause*.

*Tutor—Cannot buy property of pupil at sale by voluntary licitation.*

This case was before the Court on the merits of a petition *en nullité de décret*. André Monarque, both personally and in his quality of tutor to the substitution, created in favor of the minor children of whom Luc Quintal is tutor, caused to be sold by licitation (voluntary) the land in question belonging to the succession Poitras, of which his wife was one of the heirs. The deed of sale was passed accordingly to Henri Goyette, purchaser, on 23rd January, 1862, and Goyette the same day signed a declaration that he had bought the land for the account and profit of André Monarque,  *fils*, one of the vendors named in said deed of sale, that he had only lent his name to Monarque in doing so. Monarque was party to this declaration, and made the deed his own personal affair. André Monarque, who thought that this land was his, did not fulfil any of the charges subject to which it has been sold, but hypothecated it in favor of the plaintiff, at whose suit the Sheriff sold it. It was the tutor of the children born of the only daughter of André Monarque who bought it, and the same person, Luc Quintal, was the petitioner. The rights of the minors represented by the petitioner were only vested by the death of André Monarque (13th July, 1873), while the property was under seizure, and these rights were only known to them at the moment of adjudication.

TORRANCE, J. The petitioner invokes as ground of nullity that the land never belonged to André Monarque, as proprietor, and that it could not legally be sold as his property. Two questions have been submitted by the petitioner: 1st. Could the tutor buy the land of his pupil when sold by voluntary licitation? 2nd. Should the declaration of "command" be made at the moment of purchase in order to be valid? I do not deem it necessary to do more than answer the first. I hold that the position of Monarque on the 23rd January, 1862, as

tutor, prevented him from buying the property in question for himself. The case of *McKenzie v. Taylor*, 9 L. C. J., 113 has been cited at the bar, and C. C. P. 1278 appears very plain. I overrule the answer to the petition and grant the prayer of the petition.

*Doutre & Co.* for petitioner.

*Juloh & Branchaud* for Trust & Loan Co.

Ex parte DRUMMOND, petitioner.

*Will—Creation of Substitution.*

The petition set out that by a codicil to the will of the late Alfred Pinsonneault, a substitution had been created of certain property designated as lands of La Tortue bequeathed to Alfred Charles Pinsonneault, who had so far neglected to have a curator named to the substitution so created; that the children of the petitioner who was brother-in-law of Alfred Charles Pinsonneault, might become called to said substitution, and petitioner was interested in having a curator appointed to said substitution, and prayed accordingly that a family council be summoned.

The legatee, Alfred Charles Pinsonneault, answered that the property in question had been given to him absolutely.

TORRANCE, J. The words of the codicil requiring consideration are as follows:

XVI. Je désire que tous mes biens soient divisés également entre tous mes enfants d'après les lois en force dans ce pays. J'excepte cependant de cette disposition générale mes terres de la Tortue, situées dans les paroisses de St. Philippe et de St. Constant. Je lègue ces terres à mon fils aîné, Charles-Alfred. Mon grand-père maternel y a commencé sa carrière. Ma mère y est née, mon père y a vécu et y est mort. J'y suis né moi-même, et c'est là que j'ai passé le plus heureux tems de ma vie; quelle puissante raison donc de conserver dans ma famille ces lieux si chers à tant de titres. La vieille maison qui subsiste encore a abrité quatre générations de la même famille, mais mon fils aîné devra donc faire tous ses efforts pour conserver cette propriété, améliorer les différentes terres qu'elle renferme, et les transmettre plus tard à ses enfants. S'il n'avait pas d'enfants, je lui conseille de léguer cette propriété à un des enfans mâles de ses frères, Adolphe ou Ber-