and it was not established that the factory had been built nearer plaintiff's buildings than the original concession from plaintiff allowed, even if this stipulation was binding on the appellant.

The Court therefore maintained the judgment of the Superior Court on the principle that Turgeon was not under the control of Roy (Art. 1054, C. C.), and that there was no defect in the construction of the factory.

Judgment confirmed.

COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 7, 1885.

Before DORION, C.J., RAMSAY, TESSIER, CROSS, & BABY, JJ.

THE UNION BANK OF LOWER CANADA (plff. below), Appellant, and NUTBROWN (deft. below), Respondent.

Hypothecary action—Averments of declaration—Evidence.

HELD: 1. (*Confirming the judgment in Review*, 10 *Q.L.R.* 287)—*That the allegation in a hypothecary action of the granting of a hypothec is in effect an allegation that the person creating the hypothec had power to do so, and therefore under such allegation the Court will admit evidence to prove the existence of such power.*

2. *That the plaintiff in a hypothecary action must prove that the grantor of the mortgage was proprietor of the immoveable hypothecated at the time the mortgage was granted, and that this cannot be shown by verbal testimony.* (*Renaud & Proulx*, 2 *L. C. Law Journal*, 126, *approved.*)

3. *Where two notaries, as witnesses, sign a conveyance of lands held in free and common soccage their signatures must be proved like those of other witnesses.* (*C.S.L.C. Cap.* 37, *Sect.* 56.)

4. *A deed of conveyance of land which has not been signed by the purchaser will not make proof that he had power to create a hypothec on the property.*

RAMSAY, J. This is an hypothecary action brought by appellant on an obligation of the 21st Dec., 1867, by "The English and Canadian Mining Company" to Dr. Jas. Douglass, for $40,000, payable in five years, with interest at 8 per cent., and for security of which sum the said Company hypothecated half of lot No. 14 in 14th range of the township of Leeds. The deed was registered on the 31st March, 1868. On the 26th June, 1871, Douglass transferred $10,000 of this sum to appellant with priority of hypothec, and this transfer was registered on the 17th July, 1871.

The respondent met this action by a demurrer, setting forth that it was not alleged in the declaration that "The English and Canadian Mining Co." was owner in possession of the property of the Company, or that the Company was incorporated, or what powers those creating the mortgage possessed. The defendant besides filed three pleas. By the first he pleaded that the pretended obligation was false and simulated; that the English and Canadian Mining Co., had no legal existence, and that those who signed for the Company were not authorised to sign, and that the whole deed was simulated and unreal. By the second plea the defendant pleaded a possession of thirty years and more by himself and his *auteurs*. And by his third plea he pleads that he cannot be dispossessed until he has been paid $800 for improvements.

In the Court of first instance the demurrer was dismissed, and on the merits it was held that the chain of plaintiff's titles went back to the original patent to Sergeant Harris in 1834; that respondent's possession could not go back further than 1853, and that as he was a possessor in bad faith he had no right to his improvements.

Respondent took the case to Review, where it was held that the demurrer was rightly over-ruled, and the declaration was declared to be sufficient. It was also decided that Nutbrown had not established his prescription of thirty years, and that he had no right to improvements, if any he had made, as he was a possessor in bad faith. Furthermore, the Court decided that it was established that his pretended improvements were really none, as the land would have been more valuable as a forest than it is now with the wood cut. But the Court held that it was necessary in an hypothecary action to show