defendant, swears that he cannot remember the specific words used by the defendant to him as to his title, but he (Withers) thoroughly understood from the defendant that his title was perfect and clear of encumbrance. As to the second part of the false pretences alleged, Mr. Lighthall, notary, produces the original deed of obligation containing the assertion stated above, and says moreover that at the time of signing the obligation the defendant affirmed verbally that the property was his by good title.

As to the falsity of the assertion or pretence of the defendant that his title was good, and that the property, that is all the property, belonged to him, there cannot be any doubt. The property mortgaged was acquired during the community of property which has existed between the defendant and his late wife, and by the death of the latter *intestate*, as it was believed until recently, her children inherited her share. I will not dwell on this point, because it is so clear that the defendant's counsel themselves did not pretend to deny Mrs. Kilby's (Miss Judah's) title to a share of the property. In fact, the Superior Court of Montreal has already confirmed Mrs. Kilby's title to the three-eighths of property seized.

Was Mr. Burland's parting with his money and securities the result of the false pretences? I believe it was. There were other considerations in his mind. The opinion given to him by his notary, Mr. Lighthall, as to the validity of defendant's title no doubt was the principal one. The high position and character enjoyed by the defendant, and other considerations may have had their weight. But had Mr. Burland known that the defendant only owned five-eighths of that property, and had not Mr. Withers stated to him that defendant's title was perfect, that is perfect to the whole property, I am sure that Mr. Burland would not have parted with his money; he swears that himself positively, and it stands to reason that he would not.

Now, was the defendant animated with the intent to defraud when he obtained Mr. Burland's money? This is the delicate point in the case. It appears that in the year 1866, the firm of the late Sir George Cartier advised the Masson estate to advance a sum of money to the defendant on a property possessed by him in the same conditions as that now in question.

It appears also that in 1874 another eminent Queen's counsel of this city gave it as his opinion that defendant's title to a property possessed by him in similar conditions was good. From this it is claimed that the defendant was acting in good faith. We have no evidence whether the defendant ever disclosed to the firm of Sir Geo. Cartier, or the other eminent Queen's counsel, the facts as they were. Perhaps he never mentioned to these gentlemen any more than he did to Mr. Lighthall that the property offered as security had been acquired during the existence of his community of property, and that his wife was since deceased. Anyone examining defendant's title, his deed of purchase, the registrar's certificate, would come to the conclusion that the defendant was the owner, unless he were informed that since the purchase and the registration of the deed the position of the owner had been altered by the death of his wife. Such death does not appear at the registry office, and judging from the deed and registrar's certificate only, certainly the defendant would appear to be the only and real owner of the property. I admit that a careful examiner of titles would act wisely in ascertaining the status of the borrower; in fact, should enquire whether he is a married man or a widower, but if he forgets to do so, does the omission justify the applicant to affirm a fact which is not correct, viz., that he is proprietor of the whole estate whilst he is only part proprietor? Here the defendant is a lawyer of long experience, and it seems to me unreasonable—injurious in fact to his intelligence—to suppose that he did not know he had been married under the *régime* of community of property. But granted for a moment that he ignored it, or had lost sight of it, he was reminded thereof in two different circumstances at least. On the 1st of February, 1879, the defendant himself obtained a loan from the estate Masson, and in order to obtain that loan, his daughter (Mrs. Kilby) had to intervene in the deed of obligation, and in her quality as being the only surviving child issue of the marriage of the