aside, and that he cannot invoke the nullity of the *acte* by exception? For the affirmative the case of *Chaillé & Brunelle* is cited, 6 L.C.R. 489. In that case the plaintiff Chaillé had seized a boat. The defendant's brother claimed it by opposition in which he alleged that he had bought it and was in possession at the time of the seizure. The Superior Court set aside the seizure. In appeal, Chief Justice Lafontaine and Judge Aylwin were of opinion to reverse the judgment, and Justices Caron and Duval to confirm it. The Court being equally divided, the judgment was confirmed, and one of the *motifs* was that the plaintiff should have had recourse to the *action révocatoire*. The case of *Masson & McGowan*, Q. B. 19 Dec. 1870, might also have been cited. The Court of Appeal, by three to two, reversed the judgment of the Superior Court, (1 L.C.L.J. 63; 2 Ib. 37,) on the ground that the plaintiff should have proceeded by *action révocatoire*. There is also the case of *Lacroix & Moreau*, 15 L.C.R. 483, in which the Court was divided. There have been several decisions in the same sense in Louisiana. But no authorities are cited in the reports of the cases decided either here or in Louisiana, and it is impossible to discover on what grounds the judges based their opinions. Against these decisions may be cited the cases of *Cummings & Smith*, 10 L.C.R. 122; *McGinnis* v. *Cartier*, 1 L.C.L.J. 66; *Lepage & Stevenson*, 17 L.C.R. 209; *Hans & D'Orsennens*, Review, 1870; *Brown & Paxton*, Q.B. 1875; *Paré & Vachon*, Q.B. 1875; *Rickaby & Bell*, 2 Supreme C. Rep. 560; and *McCorkill & Knight*, Q.B. 1877, confirmed by the Supreme Court. In all these cases the nullity of the *acte* made in fraud of the creditors was invoked by contestation of opposition to annul or to withdraw, except in the case of *Paré & Vachon*, in which it was opposed by answer to a peremptory exception, and in *Bell & Rickaby*, by exception to a petition in intervention. The Court of Appeal has also decided in the same sense in the cases of *Leclaire & McFarlane*, 12 L.C.R. 374, *Lambert & Fortier*, Q.B. 1875, and *Boyer & Duperreault*, Q.B. 1876. In these cases, creditors opposed by contestation of declaration of garnishee, the nullity of *actes* passed in fraud of their rights, as was done in the present case.

There can be no doubt, therefore, that the established jurisprudence in this Province is opposed to the judgment of the Court below. This jurisprudence is based on the ground that deeds in fraud of creditors are foreign to them, and that usually they only become aware of their existence when they are invoked against them; and it is also based on the universally admitted principle of French law that a right which may be invoked by action, may always be invoked by exception. Here the respondent produced a sale *sous seing privé*. What action could the appellant bring to annul a sale of which he did not know the date, the conditions, and perhaps even the existence? Suppose the sale had been verbal, as it might have been, would it be possible for a creditor to proceed by direct action? The appellant had nothing to do with this sale so long as the respondent did not invoke it, and as soon as it was invoked, it was competent for the appellant to plead that the sale was in fraud of his rights, and to ask that it be annulled. See Dalloz, R.A., vo. Vente, pp. 847, 8, Note 2. Dalloz, R.P. 1832, 1, 135, and Sirey, 1827, 1, 53; 1861, 1, 452.

The other ground on which the contestation was dismissed by the Court below was because all the interested parties had not been summoned on the contestation. This as well as the preceding objection, doubtless arises from confusing the demand of a creditor to annul an *acte* in fraud of his rights with the action *en résolution* which one of the parties to a deed may bring to rescind it for error, deception or fraud. In the former case the creditor complains of a deed made by third parties to his prejudice, and to which he never assented. The debtor and third parties who have transacted with him have concurred in a fraud. They have committed with regard to the creditor a *quasi délit* which has prejudiced him, and they are jointly and severally bound to repair the fault. (3 Bedarride, de la fraude. Nos. 1433, 1434.) Now, actions on a joint and several obligation may be brought against any of the *obligés* that the creditor chooses. If, however, the reparation sought consists not in damages, but in the cancellation of a deed and the recovery of properties alienated, the person in possession must be made party to the contestation.

In the case of the action *en résolution*, he who has been party to the deed has given a consent from which he must be relieved before he can exercise any right contrary to the stipulations contained in it; and as contracts can only be