

through many other hands during the year and day of the *retrait*." And, add the commentators, "if it were otherwise, the purchaser, by reselling to another, could impair the condition of the retrayant, which would be an injustice." And Dunod des Re-traits, p. 6. "But if the second alienation be by onerous title, which price should be reimbursed by the retrayant? It seems that it should be that of the first, because it alone has given rise to the *retrait*."

The question, as to whether one share in an undivided succession can be seized and sold *en justice*, has been discussed at the hearing. The plaintiff contended for the negative, and based her pretensions upon the doctrine adopted in France by Art. 2205 of the Code Nap. Thomine de Mazure C. P. No. 743; Sirey, Code Annot. sous Art. 2205. The defendant replied that this article has not been reproduced in the Quebec Codes, and that such seizure and sale were perfectly legal in that Province. There is, doubtless, an apparent contradiction between the principle of hereditary law and the seizure of an undivided share in a succession; but I do not see in this suit the propriety of such a discussion. Here, there has been a duly authorized sale of Charles' hereditary rights by the curator. The defendant became purchaser. I see nothing illegal in that. If any nullity there be in it, it is at most only a relative nullity of which the defendant certainly could not take advantage. He could not be allowed to invoke the nullity of his own title in order to defeat the plaintiff's suit. And as to the plaintiff, far from asking the cancellation of this sale, she asks to be subrogated therein. The defendant at the hearing as well as in his factum has said that if a sale by a curator, like that in question, is to be subjected to the *retrait successoral*, the creditors will suffer, for it is evident that it is a rare thing to get purchasers disposed to run such a risk. But there is, it seems to me, a conclusive answer to that objection, which is that the creditors, instead of doing what was done in the case of Charles Phillips, can themselves provoke a partition and then sell that portion falling into their debtor's lot. All authorities are unanimous in recognizing their right so to do. Moreover a purchaser in good faith of an undivided share of hereditary rights is assured that when a *retrayant* presents himself he will obtain subrogation upon having previously perfectly indemnified him.

Two other questions of secondary importance have been raised