

42, 57, 235; to Vol. 13, *Revue de legis. and de juris.*, p. 532, art. par Derome where I find a learned dissertation on the subject; to *Durocher v. Turgeon* (19 L. C. J. 178), and to *Leclere v. Beaudry* (10 L. C. J. 20) and Dutruc No. 487.

Another objection to respondent's action in its entirety taken by appellant, appears to us entirely unfounded. It is that by which, invoking the doctrine adopted by the Court of Appeals at Montreal in *re Demers v. Lynch* (1 Dor. Q.B.R. 341) that a vendor, with right of redemption, cannot exercise the redemption before having tendered the price agreed upon, he argues from that here the respondent not having made a legal tender before action brought, should have her suit dismissed. The appellant makes here evidently a false application of this doctrine. There is no redemption sought by respondent's action; it is simply a subrogation, in the place and stead of the appellant as assignee of the two shares in question, the respondent seeks. As Hureaux (3 Vol. des Suc., No. 307) expresses in very happy terms, all the plaintiff says to the defendant in such an action, is "Get out of that so that I can take your place." Now doctrine and jurisprudence are unanimous in saying that she was not obliged to make any previous legal tender; it was sufficient for her to undertake, by her conclusions to indemnify the defendant before the execution of the *retrait* as she has done.

This disposes of defendant's objections to the action in its entirety.

I now come to points that apply to only one or the other of the two shares in question.

First of all, as to that of Charles, the only objection made by defendant to the *retrait* demanded is based upon the fact that he acquired it from the curator (to whom, it appears, Charles, as trader, had made an assignment under Art. 763 et seq. of the Code of Procedure) upon the authorization of a judge as required by art. 772. Such a sale says he, is equivalent to a sale par *decret*, and is not subject to *retrait*. This pretention was rejected by both the Superior Court and the Court of Review, and justly so. We have not here to decide whether *retrait* would lie against a sale made upon an ordinary adjudication *en justice* after publications (*annonces*) and bidding, and tacit refusal by the co-heir to become purchaser. That may be somewhat a doubtful question, although it seems to me that in France, the jurisprudence and the great majority of authors, admit the right of *retrait* even after