rised the cancellation of the promise of sale by Roderick McLennan, which was obtained by fraud; *that as to the taxes and seigniorial dues, he was never informed that appellant paid the same, and that in any case such taxes and dues should have been paid by Roderick McLennan who was in the occupation of the farm until evicted by the appellant, and who would have paid him;*—that the proceedings in ejectment against Roderick McLennan, could in no way affect him, as he was not a party to the suit and he could not be liable for any costs incurred, and that such proceedings were only part of the same fraudulent design of the appellant to deprive the respondent of the property by indirect and fraudulent means; that when the tender was made to appellant, he fully admitted his obligation to convey the farm to the respondent, and promised to do so, only demanding the reimbursement of certain taxes and dues, which respondent, although not bound to pay, yet offered to do so, in order to remove all difficulties and to leave no pretext to the appellant for withholding the conveyance of the farm.

After the issue had been joined and the parties had proceeded to their *enquête*, the respondent made an additional tender of $31.60 for taxes and seigniorial dues paid by the appellant, and at the same time offered to pay the $40 alleged to have been laid out in repairs if the Court should so award.

Several incidental points have been raised in this case, but the only really important question in issue is as to the effect of the stipulation contained in the promise of sale, that if the respondent failed, neglected or refused to make the several yearly payments of $100 and interest agreed upon, when they became due, he should forfeit his right to obtain a deed of sale, and forfeit the monies he had paid, which should be considered as null and void, and the parties considered as lessors and lessees.

The respondent contends that this promise of sale having been accompanied by tradition and actual possession, was under art. 1478, C. C., equivalent to a sale, which could only be dissolved by a judgment at the instance of the appellant. The appellant, on the other hand, claims that the promise is to be governed by the conditions attached to it, and that the failure of the respondent to ratify the promise of sale when he became of age and to pay the instalments on the balance of the price, as they became due, operated in the terms of the deed as a forfeiture of the rights of the respondent to acquire the property in question.

Art. 1478 C. C. applies to an ordinary and unconditional promise of sale. Here the parties have attached to their transaction a perfectly legitimate condition, the object of which was to enable the appellant to recover back the possession of his property by the simple process as between lessor and lessee, without having recourse to the expensive proceedings of a sheriff's sale, or to that of an action *en résolution de vente* in default of payment of the price of sale. The parties have in effect declared that until the respondent should pay the $700 remaining on the stipulated price of sale, he should be the tenant of the appellant, and the $500 paid should be taken in payment of the rent, and that if the balance of $700 and interest was regularly paid as the several instalments became due, the respondent should then be entitled to claim a deed of sale of the property leased. Art. 1478 C. C. does not apply to such a contract, as it was well decided by the Court of Review in the case of *Noël* v. *Laverdière* and *The British America Land Co.*, opposants, (4 Quebec Law Rep. 247). If we consider the deed of the 7th of December, 1874, not as a lease with a right to the lessee to purchase, but as a promise of sale followed by possession, it cannot be denied that the promise was made subject to the condition on the part of the respondent of paying the balance of the price by instalments, and that default of paying any of the instalments when they should have been made, defeated any right the respondent could otherwise have claimed, and this without the necessity of any demand to annul the deed.

Even before the Code, when all such clauses were considered as comminatory and required a judgment to discharge the promissor, Pothier in his treatise, *de la vente*, No. 480, 4th paragraph, says: "Quoique je n'aie pas obtenu de sen-" tence, s'il s'est passé un tems considérable, il " en peut résulter une présomption que les par-" ties se sont désistées tacitement de cette con-" vention."

Troplong, vente, No. 132, commenting on art. 1589 of the French code, says:

" Puisque la promesse de vente est équiva-" lente à la vente, il faut dire qu'elle est sus-