this kind. For instance, it did not appear that Derouselle's action was ever entered in Court, or that any proceedings were had after the service of the writ and declaration. Neither did it appear that Paquet had ever been sued by the respondent as his *garant;* nor that any notice had ever been given to him by the respondent, although it did not appear that he was insolvent. And again, the respondent should not have paid Derouselle without a judgment having been rendered or even a suit pending against him. He should, moreover, have taken all possible steps to enforce payment from Paquet. With regard to the amount claimed, there was, in the first place, no evidence in the hypothecary action of the amount of costs claimed by the respondent having been ever taxed, neither was there any evidence of the amount paid by the respondent for legal advice. One item of £2 was also paid as having been charged to the respondent by a notary, for drawing up a petition to His Excellency the Governor General For this demand the appellant certainly could not be liable. The counsel for the appellant concluded by denying the liability of the registrar in the action; stating that there was not sufficient evidence of the respondent's loss; or that even admitting the sufficiency of the evidence the appellant had been condemned by the Court below to pay double the amount for which he was responsible.

Fournier and *Gleason*, for respondent, stated that it was an admitted principle of justice that he who by his neglect or his error, caused damage, should be held liable for it. If the responsibil ty of the registrar had no valid existence, it would be much better to close all registry offices; it would, at least, remove a trap from the path of lenders and purchasers in good faith.* With regard to the pretentions set up by the appellant that a notorial *acte authentique* is no legal evidence against a third person not a party to such act, it was a doctrine contradicted by all the authors who had written on the subject † With regard to another allegation of the appellant it might be stated that the insolvency of the vendor, Paquet, was both proved and admitted in the case; and, as to the amount claimed by the respondent, it was proved by the *quittance* given by Derouselle as well as by the appellant's admission of facts.

SIR L H. LAFONTAINE, BART., C. J —After a careful examination of the facts of the case, it will be observed that it involves a question of great importance, affecting, as it does, the responsibility of registrars in their capacity of *conservateurs* of mortgages. The main question is, whether the party aggrieved has a right to maintain an action against the registrar for the amount of damage alleged to have been sustained. This right is clearly established by the 8th sec, of the Ordinance 4th Vic , cap. 30; and it cannot be denied that the registrar is responsible for the damages caused by his negligence, whether the loss arises out of his neglect to enregister a title, or by reason of an insufficient certificate given by him. The *conservateur* should be held personally responsible for negligence of his public functions. It is true that the action does not exist on, or arise from, a special contract or a personal cause; but it originates in the fundamental principles of law itself, and proceeds from the damage caused by the neglect of the party complained of to perform his public duties as an official of the law.

With regard to the amount claimed by the respondent, the payment of principal and costs is not attemped to be denied—nay, it is admitted by the appellant; and this admission, of course, proves his liability for the amount demanded.

I, therefore, come to the conclusion that the judgment of the Court below, in the present action, should be confirmed.

DUVAL, J.—This is a question of which the main issue is the responsibility of the registrar.

On this question, the old and acknowledged principle of our law is well expressed in the following words: "*Tout fait quelconque de l'homme que cause à autrui du dommage, oblige celui par la faute duquel il est arrivé à le réparer.*"

This responsibility comprises as well acts of omission as acts of commission No public officer can be allowed to plead his own negligence or that of his subordinate to protect himself against such an action as the present Nor can such public officer be l stened to when he pleads ignorance or error of judgment on his part Bertrand de Grenille well expressed the intention of the legislature when he said: "*la loi n peut balancer entre celui qui se trompe et celui qui souffre*" It is needless to refer more particularly to the writers on the subject: Troplong, Toullier, Domat, and others will be found to establish the rule beyond doubt Indeed, the principle is recognised by all the Judges of this Court.

The objection now made is to the sufficiency of the evidence adduced by the plaintiff. It is said that the notarial acknowledgment of payment signed by Derouselle, the creditor, is not evidence against third parties. I understand the rule of law on this subject very differently. The deed proves itself,—*probat rem ipsam*, —against the whole world: *le Contrat de Vente*, says Pothier, Tr. des Obligations no. 738, *prouve contre un tiers qu'il y a eu effectivement une Vente* (8 Toullier, nos. 148, 149) Were this not so, how could an action *en déclaration d'hypothèque* be maintained against a third party. Parol evidence would be clearly inadmisible. *Faits et articles* would be useless, as the defendant would answer, I was no party to the contract and knew nothing about it. How then could the original debt be proved? This rule of our law: that the deed proves itself against the whole world, is daily recognised and acted upon in all our Courts.

In thus stating my opinion on the law, I will say that there are certain items in the plaintiff's claim that cannot be allowed. The charges of the notary and some of the alleged law expenses are not proved.

As to the want of notice of action to the defendant, a public officer, an objection made in the present suit, it is clearly without foundation. The protest filed contains such notice in the most explicit terms.

MONDELET, J., after a *résumé* of the facts said:—The action in the Court below is founded merely upon a *quittance* given by Derouselle to the respondent; and for this reason, apart from all others, I think the judgment given in favor of the latter should be reversed. The *quittance* is no proof of a judgment against the respondent in so far as the registrar, a third party, is concerned; it establishes the fact only of the payment of a certain sum to Derouselle. Nothing is better established than that the notarial fact is proof only of the fact which has occurred in the presence of the notary. Apart from this *quittance* there is no legal proof of the action said to have been instituted by Derouselle against the respondent; no proof that the suit was ever returned into Court, and nothing whatsoever to shew that a judgment has ever been obtained. Even supposing that the judgment of the Court below should be confirmed by the Court here, there are several items in the respondent's claim which would have to be struck out, such as —interest, costs, amount paid to Mr. Delagrave, advocate, and to Mr. Glackmeyer, notary public, for the drawing up of a petition.

Next arises the question of the responsibility of the registrar. This is a generally admitted principle, but I do not see, in this case, what connecting link there is between him and the respondent. I can easily understand how the latter who had a business transaction with Paquet may have a recourse against him, by reason and in consequence of the damages suffered by him by reason of his being troubled in the possession of the property sold to him by Paquet. But with regard to the appellant who never gave a certificate to the respondent, who certainly never asked him for one, I cannot see what reponsibility he can be said to have incurred towards the respondent. These observations appear to be founded on the principles expressed by Troplong, *Priv. et Hyp.*, t. 4, no 1001.

I am of opinion, therefore, that the judgment of the Court below, in this case, be reversed.

BADGLEY, J —I fully concur in the opinions expressed by the Chief Justice, and Mr. Justice Duval, with regard to the incontestible responsiblity of the registrar for damages which he has caused. The public functionary, in undertaking the duties of an office, becomes directly responsible to those who employ him in that capacity for losses caused by his omission, his negligence, or his incapacity,—in proof of which I need only refer to the registry

* 1 Domat, *Lois Civiles*, p 160, liv 2, tit 8, sec 4, art 1 — 4th Vict , cap. 30, secs 8, 20, and 49

† 1 Pigeau p 226.—Nouveau Denisart vlo *Acte Authentique*, p 159.—Pothier, *Traité des obligations*, p 309, part 4 cap 1, sec 4, no 738, who says —"L'acte "*prouve contre un tiers rem ipsam* c est-à dire que la convention qu'il renferme "est intervenue"