

to him it would suffice for him to have sold all parts by him acquired, say to five different persons, each for a determinate part, to deprive the plaintiff of her right to *retrayer* the whole.

Such is not the law. The right of *retrait* would be altogether illusory if such were not the case, and if the co-heirs could be so easily thwarted. Only, in such cases, it is necessary to see against whom the action should be directed. In matters of *retrait lignager*, when only one immovable was in question, according to certain authors, the first purchaser should be ignored and the action directed against the holder, subassignee, alone. But in cases of *retrait successoral* when, as in the present instance, the original purchaser has resold merely a determinate portion of an asset of the succession, and the balance of the hereditary rights still remains in his hands, the plaintiff must of necessity direct her action against him, with the faculty or privilege, if she deems proper, of calling in the holder of the part so resold. Now, in such a case, that is to say, if between the time of the purchase and the *retrait*, the purchaser has resold, which by law he has a perfect right to do, if there be a difference between the prices of the first purchase and the resale, which price has the *retrayant* to reimburse?

It will be, as the judgment *a quo* declares, the price of the first purchase, the sale made by the co-heir of the *retrayant*. L'Abbé, Vol. 6, Rev. de *Legis. & Juris.*, 142. There are authorities to the contrary, among others, Dutruc, No. 515; Laurent, Vol. 10, No. 382, and an *arrêt* in 1857 of the Court of Besançon, *re* Dautriche, S. 58-2-292; D. 58-2-111. But the opposite opinion has prevailed and, agreeing with the judgment *a quo*, we adopt it. Pothier, *Retraits* No. 341; Merlin *Quest. v. dr. suc. par.* 2, No. 2. Aubry & Rau, Vol. 6, p. 529; Demolombe, 4 des *Suc.* No. 110; Benoit *dr. suc.* No. 135. 3 Hureaux No. 330. "The action for *retrait* (says Le Caron on the *Coutume de Peronne*, p. 351), should be instituted against the holder and possessor; at the same time, the price of the first purchase only should be paid." And Loysel (in his *Institutes Coutumières*, Vol. 3, p. 63), whose learned commentators Dupin and Laboulaye (Ed. of 1846), in speaking of his works say, "ce n'est pas de la théorie, de la divination, de la conjecture, it is the law itself, such as our forefathers recognized and practised," Loysel, I say, expressed himself in very clear terms as follows: "The *retrayant* is only obliged to pay the price, costs and *loyaux coûts* of the first sale, though the thing may have been