

with the interest, till the full payment of said sum of seven hundred dollars, then and in that case the said Thomas Grange will be bound, as he doth hereby bind himself to give the said Duncan McLennan a free and clear deed of sale of said farm; but on the contrary, if the said Duncan McLennan fails, neglects or refuses to make the said payments when they come due, then the said Duncan McLennan will forfeit all right he has by these presents, to obtain a deed of sale of said herein mentioned farm, and he will moreover forfeit all moneys already paid and which might hereafter be paid, which said monies will be considered as rent of said farm, and these presents will then be considered as null and void, and the parties hereto will be considered as lessor and lessee."

At the date of this promise of sale, Roderick McLennan was living on the farm with the respondent and other members of his family. The respondent became of age in the month of January, 1875, and continued to live on the farm with his father for about a year after he had become of age. He then left for the United States, where he still resides. He has not come to Lower Canada since he has left except once, on a visit of three or four days in the fall of 1880—(see Roderick McLennan's deposition, appendix to respondent's factum, p. 7).

The respondent never ratified the promise of sale, as he was bound to do, on his coming of age, and neither he, nor his father Roderick McLennan have paid to the appellant any portion of the principal and interest accrued on the balance of \$700 due on the price stipulated in the said promise of sale. The appellant has moreover been obliged to pay the municipal and school taxes and the seigniorial charges due on said property.

After waiting for several years without receiving either principal or interest, the appellant sought to get back the possession of his property, and on the 6th day of May, 1879, Roderick McLennan, who was still in possession of it, and who it seems had furnished the \$500 which had been paid to the appellant, when the promise of sale was passed, consented to resiliate the same and to give up to the appellant possession of the farm, on condition that he should be allowed to occupy the house till the 1st of November following (1879). A deed was passed to that effect.

Subsequently Roderick McLennan refused to give up the possession of the house, and the appellant obtained a judgment of ouster and finally recovered the possession of the house also.

It was not till the 23rd of October, 1880, after the appellant had been in possession of the farm for nearly eighteen months and of the house for about a year, that a tender was made to him in the name of the respondent, of the sum of \$997.31, as the balance in principal and interest of the price stipulated in the promise of sale of the 7th of December, 1874.

This tender was made through a notary and was accompanied by a demand on the appellant to grant to the respondent a deed of sale in the terms of the promise of sale.

The appellant having refused to comply with this request, the respondent has brought this action whereby he renews his tender, and claims that the appellant be ordered to give a regular deed of sale of the property in question, and to deliver him the possession of the same.

Upon the return of the action, the appellant by a dilatory exception demanded security for costs and a power of attorney from the respondent, as residing in the United States. This demand was complied with, and then the appellant filed a plea to the merits setting forth, that the respondent had not ratified the deed of the 7th of December, 1874, on his becoming of age as required by the said deed, and that he had failed to make any of the payments therein mentioned, and that he had thereby forfeited any right to claim a deed of sale; that Roderick McLennan who had promised to have the said promise of sale ratified by the respondent, had by deed of the 6th May, 1879, annulled and cancelled the said deed of sale, and that the appellant had been compelled to pay \$39.80 for municipal and school taxes and seigniorial dues accrued on said farm, and also \$40 for necessary repairs and \$45.70 for legal expenses; and finally that the tender of the respondent was incomplete and insufficient.

To this plea the respondent answered that he was never asked to pay the balance of the price; that the forfeiture could not be claimed until all the instalments had become due, and he had failed to pay them and the interest thereon; that he had always been ready since he had become of age to ratify the promise of sale, but was never asked to do so; that he never autho-