The Legal News.

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INSURANCE PAYABLE TO MORTGAGEE.

We notice that the question presented in the recent case of *Black & National Insurance Co.*, (*ante*, p. 29), has recently been discussed before several Courts of the United States. In one case, *Continental Insurance Co.* v. *Heilman*, Supreme Court, Illinois, February, the opinion of the Illinois Court coincides with that of the minority of our Court of Appeal. The summary of the decision is as follows:—

An insurance policy issued to A., with loss payable to B., mortgagee, was made and accepted on the condition that any subsequent contract of insurance, valid or not, made without the consent of the insurer, would avoid the policy. Afterwards, without knowledge of the company, a new policy of insurance in another company was taken out in the name of the wife of A. *Held*, that the policy was avoided by the subsequent insurance without consent, and this though the subsequent insurance was invalid. Also, a designation of payment to a mortgagee is not an insurance of his interest.

In another case of *Humphrey* v. *Hartford Insurance Co.*, U. S. Cir. Ct., N. Y., January 28, the Court appears to have taken a similar view, holding that where a contract of insurance is made with the mortgagor, the mortgagee cannot recover where the mortgagor has committed a breach of the conditions of the policy.

SURETYSHIP.

A point of some interest under Art. 1963 C.C. is noted in the case of *O'Brien & McLynn*. The Code says: "Celui qui ne peut pas trouver de caution est reçu à donner à la place, en nantissement, un gage suffisant." It was held in the case referrred to, that hypothecs on real estate may be transferred as security for debt and costs on an appeal to the Court of Queen's Bench. In the case of *Farmer*, ins., & *Bell*, petr., reported in 6 Q. L. R. p. 1, it was also held that a debt may be pledged. See also Art. 1974 C. C., which regulates the imputation of interest where a debt bearing interest is given in pledge.

GOODS SOLD ON ORDERS OBTAINED BY AGENTS.

The question discussed in the cases of *Gnaedinger* v. *Bertrand*, 2 Legal News, p. 377, and in *Gault* v. *Bertrand*, 2 Legal News, p. 411, as well as in numerous antecedent cases, continues to elicit a cross-fire of decisions. We note in the present issue two pronounced by Judges of the Superior Court holding the Circuit Court in Montreal. In one, *Desmarteau* v. *Mansfield*, Mr. Justice Jetté followed the ruling of Mr. Justice Papineau in *Gault* v. *Bertrand*, and maintained the declinatory exception. The case of *Prevost* v. *Jackson*, apparently, was even more favorable to the defendant, for the goods were sold to him in Toronto through a broker residing there, subject to ratification of the principal in Montreal. Yet the right of action was held to have originated in Montreal, and the declinatory exception was dismissed, Mr. Justice Rainville coinciding with the opinion of Mr. Justice Johnson in *Gnaedinger* v. *Bertrand*. As this question is occasioning much litigation, and can only be set at rest by an Act of the legislature or by a decision in Appeal, we are glad to be able to add that the case of *Gault* v. *Bertrand* is now before the Court of Queen's Bench, and the judgment of this tribunal will probably be obtained at an early date.

WIFE PLEDGING CREDIT OF HUSBAND.

The following, from the *N. Y. Times*, refers to a decision which has excited much interest:

Wives will pout, husbands will rejoice, and tradesmen will, we fear, swear at a very recent decision of the Common Law Division of the English Court of Appeals, which the lawyers of our own country will do very well to make a note of. Mrs. Mellor purchased of the plaintiffs, Debenham & Freebody, various articles of dress suitable to her rank in life, and which by her orders, were charged to her husband at fair prices. When the bill was sent in, however, he declined to pay it. He made his wife an allowance, he said, and had directed her not to pledge his credit. The plaintiffs replied that they knew nothing of his private arrangements with his wife, and that they should certainly hold him responsible. The tradesmen's case seems an exceedingly strong one, and with such counsel as Mr. Benjamin, whose career at the Eng-

deemed well-nigh impregnable. The only question left to the jury, however, was the sole one, "At the time these goods were ordered had Mr. Mellor withdrawn from his wife authority to bind his credit, and forbidden her to do so?" The jury found in the affirmative, and the case was adjudged against the tradesmen. The decision on appeal is very vigorously reasoned. There is, Lord Justice Bramwell said, neither general usage nor convenience in favor of having articles of dress on credit, nor can the courts take official cognizance of any practice of wives to pledge their husbands' credit for such articles. Doubtless, the husband may give the wife power to run up such bills, but why should the law give such powers to her against his will? Tradesmen should inform themselves as to the wives' authority. It is, doubtless, true that to ask questions of their lady customers would offend them, and that is a strong reason why such questions should not be asked; but it is no reason why the husband should be made liable in default of the shopman's choosing not to inform himself. Lord Thesiger added that there was, indeed, a presumption that the wife had authority to pledge her husband's credit, but the presumption was one liable to be rebutted, and had, in fact, been rebutted in this case by proof of the limitation of the wife's expenses. It was hard upon the tradesman, but it would be yet harder upon the husband to lay upon him a burden of liability against his will, and from which he would be unable to relieve himself except by public advertisement not to trust his wife, which advertisement the tradesman might, after all, plead he had not seen. The judges disputed over a case (Manby against Scott) similar to this several years in the reign of Charles II., and fifteen years ago the Common Pleas made a similar decision in Jolly against Rees. But Justice Byles then dissented, and Sir Alexander Cockburn himself has since questioned the case. *Debenham* v. *Mellor* is the first time the question has been passed upon in a Court of Appeal.

The Circuit Court of the United States for the District of California, has decided that the law of that State prohibiting the employment of Chinese by corporations is in violation of the constitution of the United States, and of the Federal treaty with China.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

[APPEAL SIDE.]

MONTREAL, March 16, 1880.

SIR A. A. DORION, C. J., MONK, J., RAMSAY, J., CROSS, J., CARON, J. *ad hoc.*

LA SOCIÉTÉ DE CONSTRUCTION DU CANADA (deft. below), Appellant, and LA BANQUE NATIONALE (plff. below), Respondent.

Note made by Corporation—In the absence of a special denial, authority of officers of an incorporated Company to make note will be presumed, and also that the note was given for consideration—Affixing double Stamps in Appeal.

The respondents brought an action against the appellants, a Building Society, on a promissory note for $2,000, signed on behalf of the Society by the President and Secretary, payable to the order of one Frechet, from whom it passed by endorsement, through several hands, to the respondents.

The appellants demurred to the action on the following grounds: 1. That the declaration showed no privity of contract between the parties. 2. That it showed no claim or right by the Bank against the Building Society. 3. That the allegations did not justify the conclusions. 4. That the powers of the Society were determined by C. S. L. C. c. 69, and did not include the power of making promissory notes, or thereby binding themselves by the signatures of their President and Secretary.

The appellants also pleaded a *défense en fait.*

The demurrer was overruled, and judgment went against the appellants for the amount of the note and costs of protest, without further proof than the production of the note and protest.

The appeal was from the judgment dismissing the demurrer, and also from the final judgment.

CROSS, J. The appellant urges that the Society had no right to borrow; that the Bank did not prove their demand; that the Society had no power to make a promissory note.

The views entertained by the Courts in England, so far as I have been able to ascertain from the course of the decisions there, would lish Bar has been as brilliant as brief, might be

seem to indicate that the making of negotiable promissory notes or other negotiable instruments by a non-commercial corporation, not specially authorised by its charter, or by the by-laws it was entitled to make in virtue of its charter powers, would be *ultra vires;* but to this rule an exception was allowed where the making of such instruments was incident to the nature of the business the corporation was authorised to transact. Thus in the case of *The General Estates Co., Exparte the City Bank*, L. R. 3 Chan. Appeal cases, p. 762, bonds had been issued by the General Estates Co., limited, being in fact a Building Society. They contained a promise to pay to the order of one J. C. Hodges who sold them to one Herman, to whom Hodges transferred them as well by endorsement as by deed, the latter being acknowledged and registered by the Company, so that they became payable to the order of Herman. He pledged and endorsed them for value to the City Bank, which institution, on the General Estates Co. being insolvent, claimed to prove for the amount of the bonds against their insolvent estate. This was resisted by the official liquidator, on whose behalf it was contended that the instruments were bonds, not promissory notes, that the General Estates Co. had no power to issue negotiable instruments, more especially promissory notes, and that Herman being the payee and a debtor of the Company, if the proof were allowed it should be subject to the claim of the Company against Herman.

The Court held the instruments to be negociable and to be proveable by the City Bank against the General Estates Company, without being subject to the equities of the claim of the Company against Herman.

Sir W. Page Wood in his remarks says:— Corporate bodies may issue promissory notes and bills of exchange when the nature and character of their business warrants it. And further on: "The better opinion seems to me to be that this is a promissory note, but if it be not so, the authorities go to this, that where there is a distinct promise held out by a company informing all the world that they will pay to the order of the person named, it is not competent for that company afterwards to set up equities of their own, and say that because the person who makes the order is indebted to them they will not pay."

Brice in his Treatise of *Ultra Vires*, edition of 1877, at p. 297, approves of this decision, and at p. 830 where he treats of a distinction he makes between the primary and secondary capacities of corporations, he says, whatever is outside or not allowed by the primary capacities will be *ultra vires* in the strict and true sense. Whatever is outside or not allowed by the secondary capacities will be *ultra vires* in the other sense.

No corporation can go outside its strict enterprise or scope. But all corporations, in prosecuting this, employ certain means. They must have agents, money, offices, and the like.

It is quite clear that certain means may not be employed by certain corporations, *e.g.*, negotiable instruments by railway companies. But is it not the true view that such employment would be *ultra vires* in the secondary sense only? Every corporation can be authorised to issue negotiable instruments, but it is only railway corporations that can make railways.

So with other means. Take borrowing. A mining corporation cannot without express power, but it can give itself such power. Is this any more than the statement that though acts outside the aims of such corporations are *ultra vires* in a strict sense, yet the employment of such a means or implement as borrowing is only *ultra vires* in the secondary sense, invalid by the dissent, and restrainable upon suit by any single corporator, but perfectly valid when all agree?

He then proceeds to give his views to the effect that where there has been "substantial" part performance, such a course of conduct by the corporation, and such action by the other side as to show that both parties intended the due carrying out of the transaction, then it is too late for the corporation to object to the invalidity of the matter, and if it does so it will be exactly in the same position as if it refused to carry out any other binding contract.

He admits that it might be different if an individual stockholder brought a suit to restrain the company from acting in a transaction so *ultra vires* even in a secondary sense.

It is to be regretted that the author has not succeeded in exposing his meaning with greater clearness, bnt it must be admitted that the subject is difficult, and I do not doubt that his doctrine is sound. It would at least seem so to

me, if I rightly interpret his meaning, which I think amounts to this:

1st. That a commercial corporation may validly make and issue negotiable promissory notes and other negotiable instruments.

2nd. That a corporation specially authorised by its charter, or having power to make by-laws for the purpose, and having made such by-laws, may do the like.

3rd. That a non-commercial corporation, irrespective of any such by-laws, may do the like if the nature and character of the business it is authorised to transact warrants it.

4th. That although the making and issuing of such instruments by a corporation may be *ultra vires*, it is only so in a secondary sense, and will be binding on the corporation, unless the transaction be sought to be restrained at the instance of some one interested as a corporator.

5th. That if a promise be held out to the public by an incorporated company that they will pay to the order of a person named, that person can transfer the instrument by endorsement, so that the company cannot set up in compensation against the holder any debt that such transferor may afterwards come to owe the company.

The application of these principles will remove the apparent difficulty in this case.

It is to be remarked that although the plea denies the right or power of the corporation appellants to make or issue promissory notes, it contains no special denial that the officers of the corporation were authorised to make and issue the promissory note in question, nor any allegation of the absence of a debt being due by the corporation for which the promissory note might have been granted. In the absence of any such special denial, or of any proof affecting the consideration of the promissory note in question, the Court will presume that it was duly authorised, that it is good at least as an acknowledgment of indebtedness, and was given for value. This is in accordance with the equitable principles of our own law, and also with the recent decisions in the United States. See Abbott's Digest of the Law of Corporations, *verbo*, Bills and Notes, p. 116. See also the Upper Canada case cited at the bar. (*Snarr* v. *Toronto P. B. & S. Society*, 29 U. C. Q. B. Rep. p. 317.

The point would be one of importance if it were up for settlement for the first time, but this Court has already held in the case of *The Corporation of the Township of Grantham & Couture*,* that the promissory note even of a municipal corporation would be held good as an acknowledgment of indebtedness. We are not disposed to go back on that decision, and we hold in the same sense in this case.

A further question has been raised, which does not seem to have been mooted in the Court below, that is, that the stamps used on the promissory note in question were not cancelled as required by law. This is evident and is not denied by the respondents, but they contend that it is an error of omission, and have petitioned this Court, supported by affidavit, asking leave to be permitted to remedy the error by affixing double stamps on the bill in question, and now making the necessary cancellation thereof. The Court is convinced of the reasonableness of this application, and the only difficulty is as to the power of this Court, being one of appellate jurisdiction only, to permit this to be done.

The last provision on the subject of remedying such errors, is contained in sec. 13 of the Dom. Act 42 Vic., c. 17, which, though passed in 1879, since the institution of this action, and similar in its terms to sec. 12 of the 37 Vic., c. 47, passed also since the negotiation of the bill in question, nevertheless applies, because it affects procedure only and gives a new remedy. Its provisions are ample, enacting that "where "in any suit or proceeding in law or equity the "validity of any such instrument is questioned "by reason of the proper duty thereon not "having been paid at all, or not paid by the "proper party, or at the proper time, or of any "formality as to the date or *erasure of the stamps* "*affixed having been omitted*," &c., &c., even although such knowledge shall have been acquired during such suit or proceeding, and if it shall appear in any such suit or proceeding, to the satisfaction of the Court or Judge, as the case may be, that it was through mere error or mistake, &c., then such instrument or any endorsement or transfer thereof, shall be held legal and valid, if the holder thereof shall pay the double duty thereon," &c.

The general provision for remedy of such defects contained in sec. 12 of 33 Vic. c. 14, passed before the bill in question was made, although

* See 2 L. N. 350.

not so specially applicable to this particular case, would nevertheless have probably been considered sufficient to admit of the application of the remedy which the respondent seeks. Now it has been made to appear by affidavits, to the satisfaction of the Court here, that it was through mere error or mistake, and without any intention to violate the law on the part of the holder, the now respondent, that the effacing of the stamps on the bill now sued on was omitted. We, therefore, believe that the above provision is sufficient to authorise us, even as a Court of Appeal where the objection has been first taken, and where the proceedings are now had, to give effect to the respondents' petition to be allowed to pay double duty and efface the stamps, but subject to costs to the appellant on this application.

The judgment of this Court will therefore be, that on the defects in question being remedied by the respondents, the judgment in the Court below in their favor will be confirmed.

Vilbon & Lafleur for appellant.

Geoffrion, Rinfret & Dorion for respondent.

SUPERIOR COURT.

MONTREAL, April 14, 1880.

NORMANDEAU et al. v. BOUGIE.

Saisie-Revendication—Possession of defendant.

The action was to revendicate a carriage alleged to be the property of the plaintiffs. The defendant denied that she ever had possession, and said that her deceased husband François Maranda had bought or leased the carriage from the plaintiffs, who had taken out a revendication against him and had obtained judgment; that the carriage was portion of his succession and in the legal possession of his heirs; that she was not in possession, and plaintiffs had only to have the judgment made common to the heirs.

TORRANCE, J. I find that the defendant was in physical possession of the carriage, and that is sufficient. If there were other persons behind, for whom or through whom she held, it was right in her to plead the facts and show who these persons were;—Pothier, Domaine, No. 298. She has not done so. I would uphold the seizure, and the question only remains as to costs. Judgment will go without costs.

M. Desjardins for plaintiffs.

Rainville for defendant.

ROBERT et al. v. NORTHGRAVES et vir, and BLANCHET, *adjudicataire*, and NORTHGRAVES et vir, petitioners.

Sheriff's Sale—Nullities which may be invoked under C.C.P. 714.

This was a petition to annul the sheriff's sale. The petitioner was the female defendant, and alleged that she had been condemned to give up another lot by the judgment in this cause within 15 days after service of the judgment upon her, and in default she was to pay $150 with interest and costs; that having been served with a copy of the judgment, she did give up the land within 15 days, but, notwithstanding her surrender of the land, a writ of execution issued, under which other land, No. 208, was seized, namely, the land in question, and sold to Louis Blanchet; that the sale of No. 208 was further illegal for the reason that petitioner had never had possession of it, and in June, 1878, a petition to annul the sale had been filed by one John Stride, which was still pending.

The plaintiff answered that defendant had not made an opposition in time, and therefore had acquiesced in the sale, that she had no interest in raising the question of nullity, and as to the other petitioner, the purchaser, his name had been used as a formality without his knowledge or consent, and he was without interest; and as to the litigation pending as to the land, of which plaintiff was ignorant, it cannot be a sufficient reason for annulling the sale; that, at most, the effect of said sale can be suspended, and operate a conditional ablegation on the part of the purchaser, who alone could complain.

TORRANCE, J. Mr. Rinfret, for petitioner Northgraves, invokes the *délaissement* made on 18th January, 1879, within 15 days after service of the judgment, as discharging him from any personal liability, as the defendant was no longer debtor, and the abandonment had never been attacked. The execution had been taken out as against a personal debtor. On the other hand Mr. Lareau, for plaintiffs, invokes C. C. P. 714, as our guide: "If the essential conditions and formalities prescribed for the sale have not been observed," the sale may be vacated at the instance of the judgment debtor. The formalities of the sale are not complained of, and no opposition to the sale was made before 15 days

previous to the sale;—C. C. P. 652. I am of opinion that nullities or informalities as to the *délaissement* cannot be invoked under C. C. P. 714. The lapse of time is a waiver of informalities before the sale. Petition dismissed with costs.

Rinfret for petitioner.

Lareau for plaintiffs contesting.

SHUTER v. SAUNDERS.

Lease—Refusal of tenant to take possession on ground of unsanitary condition of premises.

TORRANCE, J. The action was to recover one month's rent to 1st August, $26, and $78 for the quarter ending 1st November. A lease was alleged to exist for ten months and two years, beginning the 1st July, 1879. The sole question was, as to whether the house was ready and habitable on 1st July, when the defendant covenanted to receive it. The defendant refused it on sanitary grounds. The chief witnesses were John William Hughes, and Isaiah C. Radford. Defendant said he wanted a house with good drains, and Hughes was applied to by defendant to report on its condition, and he reported that it was in a proper condition on the 30th June. The defendant also made inquiry of Radford, who was sanitary inspector for the city, and his report as to its condition on the evening of the 30th was unsatisfactory. Hughes was employed to put the house in order, so as to satisfy reasonable requirements. A drain was out of order which ran under the kitchen floor, and it was replaced on the 30th June so as to satisfy the requirements of the inspector of drains, Lowe. There was evidence that Hughes terminated his work on the morning of the 30th June. Radford examined the house at the request of Hughes on the 28th June, and again on the 30th, which was a Monday, and his evidencewas that on Monday afternoon, at 5 p. m., there was fecal matter about the drain-pipe, stinking earth, I presume the result of the old broken pipe, which rendered it impossible for him to say that the house was then in a good sanitary condition. Hughes, in cross-examination, answered the defendant's counsel with the remark that the house was in a good sanitary condition for an average Montreal house. Radford visited the house again on the 25th July, and the offensive fecal matter had then disappeared and had been replaced by ashes. When it was removed is not clear or made to appear. As to the requirements of an ordinary Montreal house, the opinion of Radford is poor, and he said such requirements would not be a good sanitary condition. The Court cannot on the evidence say that the evidence proves that the house on the 1st July was in a condition in which the defendant was bound to receive it under his agreement. The action is dismissed.

A. & W. Robertson for plaintiff.

Macmaster & Co. for defendant.

MCNICHOLS es qual. v. BADEAU es qual., and THE CANADA GUARANTEE CO., T. S.

Admission in declaration of garnishee.

The plaintiff was a judgment creditor of Badeau in his quality of curator to the vacant succession of the late Alphonse Doutre, and lodged an attachment in the hands of the Canada Guarantee Company. They declare that they had in their hands a sum of $570.24 belonging to the succession of Alphonse Doutre, but that they held it as a special security to secure them against any claims which might be brought against them under certain bonds given by them to the Queen, whereby they guaranteed the good conduct of the said Doutre in his office of assignee. This declaration was contested by the plaintiff, denying the allegation of suretyship.

TORRANCE, J. The only proof in this matter is the declaration of the company, which cannot be divided. *Molson* v. *O'Brien*, 21 L. C. J. 287. The contestation is dismissed.

R. & L. Laflamme for plaintiff.

J. C. Hatton for the Canada Guarantee Co.

BOURGOIN et al. v. THE MONTREAL, OTTAWA & OCCIDENTAL RAILWAY CO.

Summons—Service upon Company—Proof made by bailiff's return.

It was understood that this action should be dismissed following the decision of the Privy Council in England, but the plaintiffs contended that the exception *à la forme* had to be dismissed. The defendants filed it on the 31st May, 1878, contending that the service of the writ and declaration on the 17th May, speaking to and leaving the papers with one of the em-

ployés of defendants at their office and place of business in Montreal was a nullity, inasmuch as they had then ceased to have any office or place of business, and their affairs were in the hands of the Government.

TORRANCE, J. The defendants say that the service could only be made upon the president, secretary or agent of the defendants, and not upon an *employé* generally. The rule is C. C. P. 61, 62, and I am of opinion that the service upon an *employé* at the office and place of business is a compliance with the requirement of service upon an agent. It is consistent with the ordinary rule of service upon a grown and reasonable person of an ordinary domicile, and no departure from the ordinary practice has been shown to be inconvenient in the present case. At any rate, under C. C. P. 61, service on an *employé* at the office, is good. Under the evidence I only look at the return of the bailiff, and I hold that his return which makes proof, is a sufficient compliance with the law. Exception dismissed and action dismissed.

J. Doutre, Q. C., for plaintiffs.

DeBellefeuille for defendants.

SUPERIOR COURT.

MONTREAL, April 17, 1880.

RICKABY v. BELL, and BELL, Petitioner.

Act repealing Insolvent Act—A Statute takes effect from the first moment of the day it received the Royal assent.

A writ of attachment under the Insolvent Act was taken out against the defendant, and delivered to the assignee, to whom it was addressed on 1st April instant, before 3 p. m. At a quarter past three the Act was assented to, which repealed the Insolvent Act, provided that all proceedings in any case where the estate of an insolvent has been vested in an official assignee before the passing of this Act, may be continued and completed thereunder. The writ was not served upon the defendant till between 5 and 6 p. m.

TORRANCE, J. The question to decide is whether the defendant was made an insolvent by the proceeding taken, or whether the passing of the repealing act took him out of the operation of the Insolvent Act. The old rule of the operation of an act was that if no period was fixed by the statute itself, it took effect by relation, from the first day of the session in which the act was passed, which might be weeks or months before it received the royal sanction. This was remedied by 33 Geo. III., c. 13, which provided that acts should only have effect from the day of the sanction. Our Civil Code, Article 2, says:—"The acts of the Provincial Parliament are deemed to be promulgated: 1. If they be assented to by the Governor, from the date of such assent." 31 Vic., c. 1, s. 4 (Canada) enacts that the date of such assent shall be the date of the commencement of the act. Here arises the question whether the whole day is included, namely, the whole of first April. As a general rule there are no fractions of days in the computation of time, but there are many exceptions. Dwarris, p. 779, says: "From the date," and "from the day of the date," are of one sense, "since in judgment of law the date includes the whole day of the date." 1 Kent, Commentaries, p. 455, says: "A statute, when duly made, takes effect from its date, when no time is fixed, and this is now the settled rule." And in a foot note: "It goes into operation the day on which it is approved, and has relation to the first moment of that day. (In re Welman, 20 Vermont Rep. 653.) There may be some inconveniences in giving the law a retroactive effect to the first moment of the 1st April, but it is impossible to hold that the law only came into force on the night of the 1st, and it would be hard to apply one rule to an insolvency in the morning and another rule in the evening. The Statute having come into force on the 1st, it is proper to say that its operation began in the morning, and covers all acts done during that day. Taking this view of the case, my conclusion is that the writ should be quashed, but I give no costs.

Keller for petitioner.

Geoffrion for plaintiff contesting.

LA SOCIÉTÉ de CONSTRUCTION MÉTROPOLITAINE v. BEAUCHAMP, and ARTHEMISE DAVID et vir, opposants.

Alienation of immoveable after institution of hypothecary action—C. C. 2074.

The female opposant opposed the seizure made of certain land abandoned by the defendant and in the hands of Alfred Brunet, Curator She alleged that she was proprietor in possession on 22nd January, 1879, date of the *délaisse-*

ment; that by deed of sale 26 June 1877, the defendant Onesime Beauchamp sold the land to opposant, and her deed was duly registered on 22nd January 1878, before the *délaissement*:—that from the day of her purchase she has been in open and public possession:—that opposant is now wife of Louis Ovide Grothé separated as to property by contract 7th April 1878. Plaintiff contested this opposition, alleging that the action (hypothecary) was served upon defendant on 16 January 1878, that defendant was then sole proprietor of the land, having acquired it from one Jean Marie Grothé, personal debtor of plaintiff by purchase of 14th October 1876, registered 3rd January 1877, that the purchase invoked by opposant was only registered on 22nd January 1878, several days after the service of the action; that the deed invoked by opposant shows that she is personally bound to plaintiff for payment of the debt of the latter.

TORRANCE, J. The non-registration of the deed to opposant before the institution of this action is fatal to her title. C. C. 2074, says specifically, that the alienation of land by the holder against whom the hypothecary action is brought is of no effect against the creditor bringing the action, and contrary to the pretension of opposant, this rule is directly applicable to the present case. See also *Lefebvre* v. *Branchaud*, 1 Legal News, 230.

Opposition dismissed.

Geoffrion for plaintiff.

Dalbec for opposant.

CIRCUIT COURT.

MONTREAL, March 27, 1880.

DESMARTEAU et al. v. MANSFIELD.

Right of action—Goods sold on order obtained by travelling agent.

The plaintiffs, merchants doing business in Montreal, sued the defendant in the District of Montreal for a balance of $86.96 for goods sold and delivered. The defendant was described in the writ as of New Edinburgh, County of Carleton, Ontario, and he was served personally in the City of Ottawa in the said County of Carleton.

The defendant pleaded a declinatory exception, on the ground that the Court before which he was sued was neither the Court of his domicile, nor the Court of the place where he had been served personally, nor the Court of the place where the right of action originated, (C. P. 34.) The goods, it appeared, had been sold on an order obtained from defendant at his domicile by a travelling agent of plaintiffs, and ratified by them in Montreal.

The defendant, among other authorities, cited Rolland de Villargues vo. Ratification, par. 5, De l'effet des ratifications, Col. 2, No. 82:—"Il résulte de cette disposition deux principes très-importants, savoir: 1° Que la ratification a un effet rétroactif, relativement à la personne qui ratifie. 2° Mais que l'effet rétroactif ne peut préjudicier à des tiers avant la ratification." With regard to the person who confirms or ratifies, the author adds: "Ce n'est point à son égard *un contrat nouveau; c'est l'ancien qui conserve ou reprend sa force, et qui produit son effet du jour de sa date*, et non pas seulement du jour de sa confirmation." Also Pothier, Obligations, No. 79.

JETTE, J., referred to the decision of Mr. Justice Papineau in *Gault* et al. v. *Bertrand* (2 Legal News, p. 411), and maintained the exception.

Action dismissed.

Trudel, De Montigny, Charbonneau & Trudel for plaintiffs.

Prevost, Préfontaine & St. Julien for defendant.

CIRCUIT COURT.

MONTREAL, April 16, 1880.

PREVOST v. JACKSON.

Right of action—Sale by broker subject to ratification by principal.

The action was brought before the Circuit Court, Montreal, for the price of certain goods sold to defendant, who was described as of Toronto, Ontario, and service was made upon him there.

The defendant pleaded a declinatory exception, that he could not be sued before the Court of Montreal, the right of action having originated at Toronto.

It appeared that the sale had been effected through one Kilner, broker, of Toronto, subject to the ratification of his principal in Montreal.

RAINVILLE, J., was of opinion that the right of action under such circumstances originated in Montreal, and would adhere to the rulings in that sense, until the question was otherwise settled.

Exception dismissed.

Rainville for plaintiff.

W. B. Lambe for defendant.