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JUDICIAL REFORM.

In the "Lettres sur la Réforme Judiciaire," by Mr. Pagnuelo, to which brief allusion has already been made, a number of changes are proposed in the organization of the Courts and the system of procedure. These may be grouped for the most part under the following heads:—1st. Re-organization of the judicial districts, and re-distribution of the work, so that by substituting county judges for Superior Court judges for a portion of the business, the latter may be drawn more together than at present, and provision may be made for hearing contested cases before three judges. 2. Amendment of the procedure, so as to shorten delays, and expedite the final judgment. 3. Supervision of the judges themselves, to prevent abuse of authority or unjustifiable delays in the disposal of cases.

As to the first point, the reconstruction of the Courts, it is proposed to allot a larger number of judges to Montreal, Quebec, Sherbrooke and Three Rivers; to divide the Province into two *arrondissements*, with a Chief Justice for each; to abolish the Court of Review, and to constitute the Superior Court with three judges for hearing causes on the merits. With regard to delays, it is suggested that in the Superior Court the delay for summons should be only three days, and that the other delays be similarly shortened. Advocates chargeable with unnecessary delays in the conduct of a cause are to be held answerable in damages. Lastly, as to the supervision of the judges, it is proposed to create a *ministère public*, composed of the Minister of Justice, the Attorney-General, an Advocate-General at Montreal, another at Quebec, and of substitutes. This board or council would have a general supervision of the enforcement of laws, the conduct of officers of the Courts, and in general everything relating to public order. The Chief Justices are also to have disciplinary powers over the judges of their *arrondissements*, and a summary method—*la prise à partie*—is proposed of prosecuting charges against judges who have been remiss in their duty.

Our space will not admit of entering into the details of the scheme, of which the above is an imperfect outline. They are set out at great length and with much minuteness in twenty letters, comprising 200 pages, and in the *projet* of law, which fills 38 pages more. Our readers will no doubt consult the work for themselves. We may say, however, that several of the suggestions are worthy of attention. The facilities for rapid travel which are enjoyed at the present day seem to suggest strongly the advantage of centralization, to some extent at least, in order that judicial work may be more evenly divided, and that the judges may have opportunities for conference, and convenient access to the works which they have occasion to consult in the course of their labors. The labor of hearing cases on the merits before three judges would not greatly exceed that now occasioned by the revision of one judge decisions by three judges. The shortening of the delays for summons is perhaps not advisable. The present rule gives the debtor more time to settle before the costs are materially increased by the return of the action. On the other hand, Mr. Pagnuelo proposes to allow suits in which judgment has been rendered by default to be re-opened in certain cases. A system of "conciliation" is also proposed, by which parties, before entering upon a suit, would have an opportunity of coming to an agreement or compromise.

One other suggestion deserves to be noticed—that the parties be required to file a factum before the trial, setting out the facts which they intend to prove, and the propositions of law on which they rely, together with their authorities. The labor of the judges is sometimes greatly increased by the apparent reluctance of counsel to commit themselves to definite propositions.

The part of this *projet* which will find least support is probably the suggested surveillance of the judges. We are inclined to think that the remedy would do more harm than the disease it is intended to cure. Under the existing state of things in this Province, the subjection of the judges to surveillance and discipline to the extent proposed is hardly practicable; and in time to come it is to be

hoped that all occasion for such checks will have disappeared.

Changes in procedure have the disadvantage of setting aside rules which have involved much judicial labor in their interpretation and application to the business before the Courts. Almost every article in the Code of Procedure has now been discussed, and given birth to one or more decisions in the Practice Court, and a number have even been examined in appeal. It is evident, moreover, that some of the rules proposed would lead to considerable uncertainty, for a great deal is left to the discretion of the judge.

THE LATE CHIEF JUSTICE COCKBURN.

A telegram from England states that Sir A. J. E. Cockburn, Lord Chief Justice of England, died on the 21st instant, in the 78th year of his age. His illness had been intimated in a previous despatch, and death appears to have followed at a few days' interval. This is the third prominent English judge who has been removed by death within a very brief period—first, Lord Chief Baron Kelly, then Lord Justice Thesiger followed, and now, most eminent of all, the Lord Chief Justice of the Queen's Bench. It is remarkable that all these judges died in harness as it were, all being in office at the time of their decease.

The career of Sir Alexander Cockburn has been a brilliant one. He was a student at Trinity College, Cambridge, and graduated with high honors. He chose the Western Circuit, and was appointed Q.C. in 1841. Among the celebrated causes in which he was concerned was the prosecution of Palmer, the poisoner. In 1850 he became Solicitor-General, and the following year was made Attorney-General. In 1856 he was elevated to the Bench, being appointed to the office of Chief Justice of the Common Pleas. Three years later he succeeded the late Lord Campbell as Lord Chief Justice of England, a position which he continued to fill until his decease. During this long career on the bench, he presided in several most important cases, among which may be noticed the trial of General Nelson and Lieut. Brand, prosecuted by the Jamaica Defence Committee, and the extraordinary trial of the Tichborne claimant in 1873-4. He was also appointed arbitrator on the part of Great Britain in the settlement of the Alabama claims under the Washington Treaty, a task in which his lordship displayed ability of a very high order, and added greatly to his reputation. Sir Alexander was the author of several pamphlets. It was reported a few years ago that he contemplated a work on the authorship of the letters of "Junius," and only a few weeks ago he appeared in *The Nineteenth Century* as the contributor of a paper on "The Chase—its History and Laws." His judgments have always commanded great respect, and the bench by his removal loses one of its very ablest members.

JUDICIAL APPOINTMENTS.—Mr. A. R. Angers, Q.C., has been appointed a judge of the Superior Court, in the place of the Hon. J. N. Bossé, resigned. Mr. William McDougall, Q.C., has also been raised to the bench, in the room of Mr. Justice Maguire, deceased.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, Nov. 12, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ., BABY, A. J.

ROBERT dit NAMUR, appellant, and THE TRUST & LOAN CO., respondent.

Security in Appeal.

This was a petition by respondent to have the security rejected, and new security ordered within a specific delay; and in default that the appeal be dismissed with costs.

PER CURIAM. The appellant, not being able to find qualified security for her appeal, made over a certain property hypothecated to the amount of $10,000 in favour of the respondent, —the very property in question in the present suit—by a deed in which it is stipulated that they will neither sell nor mortgage the property during the suit, and that they will return it to her if she pays the judgment. One of the sureties swears these properties are worth from $15,000 to $17,000. They pretended to buy them for $12,000 from appellant. In the Cor-

poration books they are valued at $12,600. The pretended purchasers have not the full title to them. The vendor even has not the full title. So what remains after the payment of the respondent's hypothec and interest? Absolutely nothing. We do not think a party can dispossess himself of his property to qualify sureties.

Petition granted: no objection below, and therefore no costs here; appellant ordered to give new security within fifteen days.

Pelletier & Jodoin, for appellant.

Judah & Branchaud, for respondents.

BOARD OF TEMPORALITIES, &c., v. MINISTER and TRUSTEES of ST ANDREW'S CHURCH.

Service upon President, Secretary or Agent—Appeal—Attorney.

Service upon a President, Secretary or Agent, under C.C.P. 61, may be made either personally on the officer or at his domicile.

A motion for leave to appeal may be made without a substitution, by one of the appellant's attorneys of record in the Court below.

An appeal may be granted from an interlocutory judgment dismissing an exception to the form.

Motion for leave to appeal from judgment dismissing *exception à la forme*.

The service of the action was at the domicile of the President and at the domicile of the clergyman. The defendant contended that the service must be at the office of the Corporation, or elsewhere on the President, Secretary or Agent personally, art. 61, C.C.P.

The plaintiff contended. 1. That the motion was signed by Mr. Macmaster alone, and that the attornies were Messrs. McMaster, Hall and Greenshields. 2. That the judgment was not appealable under art. 1116, C.C.P. 3. That the service was regular.

The COURT held that the motion was sufficiently made by one of the attornies. An appeal may be granted from an interlocutory judgment dismissing an *exception à la forme*. The general rule for service is that it may be made on the defendant personally or at his domicile. When service is allowed to be made on the President, Secretary or Agent, it is because he is assimilated to a defendant. Therefore, when the law says service may be made on him without saying "personally," the true interpretation is that it may be made on him in the same way that it may be made on any other defendant, that is personally or at domicile. The Court therefore thinks that the interlocutory judgment was correct and that leave to appeal should be refused. The case cited was before the Code and therefore is not binding on us, besides it seems to have been overruled in the case of *Valin & The Corporation of Terrebonne*.

Motion rejected.

D. Macmaster, for defendants moving.

J. L. Morris, for plaintiffs.

SUPERIOR COURT.

MONTREAL, Sept. 25, 1880.

JETTÉ, J.

LA COMPAGNIE DE PRET ET DE CRÉDIT FONCIER v. GARAND es qual., and HENEY et al., opposants, and PHILLIPS, contesting.

Resiliation of Sale—Registration.

Avant la promulgation du Code, le vendeur avait, sans stipulation à cet effet, le droit d'exercer l'action en résolution de vente faute de paiement soit partiel, soit total du prix, et même faute de prestation de la rente constituée représentant le prix. Ce droit de résolution peut être exercé par le vendeur, qui n'a pas fait renouveler l'enregistrement de son titre, à l'encontre des créanciers hypothécaires dont les droits sont régulièrement enregistrés. Le vendeur non payé, qui n'a pas exercé son droit de résolution avant le décret de l'immeuble, peut convertir sa demande en réclamation sur les deniers et être préféré aux créanciers enregistrés.

JETTÉ, J. Le 7 octobre 1856, le Dr. Turcotte agissant pour dame Léocadie Charlotte Heney, sa femme, a vendu à François Roussel, un emplacement situé à Montréal, et ce pour une somme de £40, pour laquelle l'acheteur a constitué en faveur de la dite dame Heney, ses héritiers et ayans cause, une rente annuelle et perpétuelle de £2 8 0. Il a été de plus stipulé qu'en cas d'aliénation de cet emplacement par l'acquéreur, le capital de la dite rente constituée deviendrait exigible, à moins d'obligation for-

melle des acquéreurs subséquents de payer la rente. Enfin, il a été convenu qu'en cas d'inexécution des conditions de la dite vente Madame Turcotte, ses hoirs et ayans cause auraient le droit " de reprendre le susdit lot de terre et de " rentrer dans la possession et jouissance " d'icelui et dans toutes ses circonstances et " dépendances "; ce terrain restant affecté par privilége de bailleur de fonds à l'accomplissement des dites conditions.

Le 15 août 1859, Roussel a vendu à Mainville aux mêmes conditions, mais le capital de la rente est mentionné dans ce second titre, (sans explications) comme étant de £50 0 0 au lieu de £40 0 0, et la rente comme étant de £3 au lieu de £2 8 0.

Le 20 septembre 1860, Mainville a vendu à *Pearson* aux mêmes charges et conditions qu'il avait acceptées lui-même. Pearson ayant failli et obtenu un concordat de ses créanciers, ses biens furent rétrocédés de son consentement à M. Garand, le défendeur, constitué fidéi-commissaire pour le bénéfice de tous les créanciers du failli. C'est ainsi que la demanderesse a fait vendre sur le défendeur ès-qualité l'immeuble originairement concédé par Mad. Turcotte à Roussel, et transmis ensuite à Pearson aux conditions susdites. Le prix de cet immeuble étant maintenant entre les mains du shérif, un projet d'ordre de distribution a été préparé, par lequel les opposants, héritiers et ayans cause de Madame Turcotte, ont été colloqués pour le capital de la dite rente constituée et deux années de rente—en tout $224.00.

Phillips, créancier porteur d'un titre dûment enregistré sur l'immeuble vendu, et qui a fait renouveler son inscription après la confection du Cadastre, conteste cette collocation et soutient que les opposants n'y ont aucun droit, attendu qu'ils n'ont pas fait renouveler en temps utile l'enregistrement du titre d'où découle leur privilége, et que cette omission est fatale à l'exercice du droit qu'ils réclament.

Les opposants répondent que comme vendeurs non payés de l'immeuble dont le prix est à distribuer, ils avaient le droit de demander la résolution de la vente consentie par leur auteur, et de rentrer ainsi en possession du dit immeuble dans lequel ils avaient un droit réel; mais que n'ayant pas exercé ce recours en temps opportun, ils sont bien fondés à réclamer par privilége sur le produit de cet immeuble, conformément à l'article 739 du Code de Procédure Civile.

Il est bon de remarquer d'abord que le titre en vertu duquel les opposants réclament est *antérieur* au code.

Or notre jurisprudence établit les propositions suivantes :

1o. Que la résolution pouvait, avant le Code, être demandée pour non paiement d'une rente représentant le prix aussi bien que pour non paiement du prix même; *Saint Cyr* v. *Millette*, 3 Q. L. R. p. 369.

2o. Que le droit de résolution stipulé en faveur du vendeur, était conservé au détriment des créanciers hypothécaires même sans enregistrement du titre; *Shaw* v. *Lefurgy*, 1 L. C. R., p. 5; *Bouchard* v. *Blais*, 4 L. C. R.. p. 331; *Thomas* v. *Aylen*, 16 Jurist, p. 309; *Gauthier* v. *Valois*, 18 Jurist, p. 26.

3o. Que le vendeur non payé qui n'a pas exercé son droit de résolution avant la vente, peut convertir sa demande en réclamation sur le prix qui représente l'immeuble vendu, et être préféré aux créanciers enregistrés.

Arrêts ci-dessus cités.

Ces décisions règlent la question soulevée ici. Le titre des opposants est antérieur au Code et par suite leur droit de demander la résolution de la vente a été conservé même sans enregistrement. Or si l'enregistrement n'était pas nécessaire, le renouvellement ne l'était pas non plus.

Les opposants ne s'étant pas pourvus par action en résolution de la vente avant le décret, l'art. 729 du Code leur donnait incontestablement le droit de réclamer sur le prix, la somme qui leur est due, et d'être colloqués par préférence aux créanciers hypothécaires de leur débiteur.

La collocation des opposants doit donc être maintenue, mais pour la somme de $160, seulement en capital, et deux années de rente $19.20, en tout $179.20, qui est la seule somme que justifie le titre constitutif de la rente due. Mais comme le créancier Phillips n'a pas fait cette distinction et a contesté toute la collocation, il devra supporter les frais, dont distraction est accordée à MM. DeBellefeuille et Bonin, avocats des opposants et créanciers colloqués.

DeBellefeuille & Bonin, avocats des opposants.

Monk & Butler, avocats du contestant.

MONTREAL, Nov. 13, 1880.

PAPINEAU, J.

DARLING es qual. v. MCINTYRE et al.

Insolvent Act of 1875—*Action under Sec.* 133—*Repealing Act.*

An action under s. 133 *of the Insolvent Act of* 1875 *may still be brought, in any case in which the estate of the insolvent became vested in an official assignee before the passing of the act repealing the Insolvent Act.*

The action was brought by the assignee of the insolvent estate of James Hines, under Sect. 133 of the Insolvent Act of 1875, alleging that certain goods of the insolvent had been delivered to the defendants, creditors of the insolvent, by way of illegal preference, and the plaintiff prayed that the defendants be ordered to deliver over to him the said goods.

The defendants demurred on the ground that this was a remedy given under the Insolvent Act, which had ceased to be in force before the date of the institution of the action.

PAPINEAU, J, dismissed the demurrer. The writ of attachment issued in March, and the Insolvent Act was not abolished until 1st April. The repealing act, 43 Vict. c. 1., contained the following exception : — " Provided that all proceedings under the Insolvent Act of 1875 and the amending acts aforesaid, 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," &c. The present case came within the exception. Sec. 31 Vic. c. 1, s. 7, (35).

The judgment is as follows:

" Considérant qu'il ressort des allégations de l'action, que le bref en liquidation compulsoire émané en cette affaire, l'a été avant l'abrogation de la loi de faillite de 1875 et de ses amendements, qu'il a été exécuté par un syndic officiel avant la dite abrogation ; considérant qu'en pareil cas et d'après la loi, le dit syndic officiel a été légalement saisi de tous les biens du failli avant l'abrogation des dites lois concernant la faillite, et qu'en conséquence par une clause expresse du statut abrogeant les dites lois de faillite, le syndic officiel et le syndic qui l'a remplacé, et le failli et les biens qu'avait le failli restent soumis aux dispositions des dites lois de faillite ;

" La cour déclare la dite défense en droit mal fondée," etc.

Demurrer dismissed.

Monk & Butler, for plaintiff.

L. N. Benjamin, for defendants.

SUPERIOR COURT.

MONTREAL, Nov. 19, 1880.

RAINVILLE, J.

CORBEIL et al. v. CHARBONNEAU, & MARTINEAU et al., T. S.

Saisie-arrêt before judgment—Immoveable—C.C.P. 834.

Under C.C.P. 834, *the immoveables of the debtor may be seized under a writ of saisie-arrêt before judgment.*

The female defendant petitioned to set aside a seizure of an immoveable under a *saisie-arrêt* before judgment, as irregular, illegal and void, even if the allegations of the affidavit were true. The reasons set forth in the petition were the following :—

1o. Parce que la loi ne pourvoit pas à un procédé de ce genre.

2o. Parce que par la loi, un demandeur ne peut avant jugement saisir et arrêter un immeuble de la manière que les demandeurs l'ont fait en la présente cause.

3o. Parce que le seul procédé que les demandeurs pouvaient adopter en la présente cause était la requête pour séquestre.

RAINVILLE, J., dismissed the petition, the judgment being as follows :—

" La cour, après avoir entendu les parties sur la requête de la dite Dame Adéleine Charbonneau aux fins que, pour les causes et raisons y alléguées, la saisie immobilière pratiquée, savoir, cette partie de la saisie par laquelle on a saisi l'immeuble en question au moyen d'un bref addressé au shérif, soit déclarée illégale, irrégulière et nulle, ainsi que tous les procédés faits en vertu d'icelui bref, et à ce qu'en conséquence, cette dite partie de la saisie-arrêt soit renvoyée avec dépens, avoir examiné la procédure et délibéré ;

" Considérant qu'aux termes de l'art. 834 du C.P.C., le demandeur avait droit d'obtenir un bref à l'effet de faire arrêter les *biens* et effets de son débiteur ;

"Considérant que pour obtenir le dit bref, le poursuivant doit produire un affidavit constatant que le défendeur recèle ses *biens;*

"Considérant que le mot *biens* est générique et comprend les immeubles aussi bien que les meubles, et que dans les statuts refondus du B.C., ch. 83, s. 46, on se servait du mot *estate*, lequel est aussi compréhensif et général que le mot *biens*, et que l'on s'était servi des mêmes mots *biens* et *estate* dans le statut 27 G. III., c. 4, s. 6;

"Considérant qu'aux termes de l'art. 841 du C.P.C., il est procédé à la saisie des biens du défendeur de la même manière que sur exécution d'un jugement;

"Considérant que, pour obtenir un bref de saisie avant jugement, le déposant doit jurer que le défendeur dissipe et recèle ses *biens* en général, et qu'il ne suffirait pas de jurer qu'il recèle ses biens meubles et effets;

"Considérant qu'il est nécessaire, pour obtenir un bref de saisie-arrêt avant jugement, que le débiteur recèle ses *biens*, même immeubles, il suit comme conséquence logique et inévitable, que le demandeur doit avoir le droit de faire arrêter les biens mêmes que le débiteur recèle;

"Déclare valable la saisie faite en cette cause, et rejette la dite requête de la défenderesse avec dépens distraits, etc."

A. Dalbec, for plaintiffs.

Loranger, Loranger & Beaudin, for defendant, petitioner.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, Nov. 22, 1880.

TORRANCE, J.

MOLSON et al. v. THE CITY OF MONTREAL.

Injunction—Suspension of execution of judgment.

This case was before the Court on an application of the plaintiffs for an order against defendants, enjoining them not to execute a judgment obtained by them in the Recorder's Court on the 11th September last against plaintiffs, whereby plaintiffs were condemned to pay certain sums of money assessed against their property and them for the costs of construction of a certain drain. The plaintiffs had instituted the present action to have the judgment set aside, as well as the resolution and assessment roll upon which the judgment was based. A petition was presented to Mr. Justice Rainville sitting in Chambers on the 14th October, alleging that the defendants had issued warrants of distress to enforce said judgment, and praying that they be enjoined not to execute said warrants until the present action had been determined. Mr. Justice Rainville had ordered all proceedings to be suspended under the warrants until the petition was decided.

TORRANCE, J. The validity of the assessment and the judgment of the Recorder are in question in the present cause, and it appears to me only reasonable that, pending the present suit to try the validity of the assessment and the judgment, the defendants should be enjoined not to execute the judgment complained of. The defendants, resisting the petition, contend that the validity of the judgment of the 11th September can only be tried by the writ of *certiorari*, but I am not prepared to assent to this. The points in the case are easily discussed, and I think therefore that the petition of the plaintiffs should be granted. I have conferred with more than one of my brother judges, and they agree. Costs reserved.

Petition granted.

Beauchamp for plaintiffs.

R. Roy, Q.C., for defendants.

COURT OF REVIEW.

MONTREAL, Dec. 29, 1879.

JOHNSON, TORRANCE, RAINVILLE, JJ.

THE TRUST & LOAN CO. v. GUERTIN.

[From S. C., Iberville.

Delegation—Acceptance.

The acceptance by the hypothecary creditor of a delegation of payment, contained in the deed of sale of the hypothecated immoveable, is a matter of consent merely between the creditor and the purchaser, and may be proved by showing that both purchaser and creditor acknowledged and accepted the relation of debtor and creditor.

The inscription in review was from a judgment of the Superior Court, district of Iberville, Chagnon, J., May 20, 1879.

JOHNSON, J. One Pinsonault was the debtor of the plaintiff under two deeds of obligation,

of which the payment was assumed by the defendant in a deed of sale to him from Pinsonault. After assuming these payments, the defendant actually paid to the plaintiff large sums, admitted to amount to at least a thousand dollars, besides interest; but upon being sued for the balance he contended, under a demurrer and an exception, that there was no right of action, because the delegation in his deed of sale had not been accepted, and further, that he had been discharged by his vendor. To this the plaintiff answered that the vendor's discharge was a sham, and no money had been paid; and the only evidence in the case, besides the several deeds, is the evidence of the defendant himself. Now, from the dates of these instruments it appears that the first obligation by Pinsonault was passed in 1854, the second in 1862. The sale to the defendant was in 1863, and the so-called *quittance* from Pinsonault to the defendant, which is a *quittance* for *one hundred dollars*, was on the 14th of April, 1877, twenty-three years after the first obligation, fifteen after the second obligation, and fourteen years after the sale. The defendant is asked whether he paid this $100 acknowledged by the *quittance* of the 14th of April, 1877; and he answers he paid no money on the 14th of April. He does not add that he paid on any other day, which would have presented the point insisted on by the defendant's counsel, that the answer was indivisible. But what if he really paid this money acknowledged in April, 1877? What is it said to be in the deed? It is only said to be a *balance due to Pinsonault* of $100. This fact, even if true, could not affect the obligation assumed by the defendant to the plaintiff, and already partially executed by payments of over $1,000. The authorities put it in the clearest manner that the acceptance of the delegation by the creditor is a matter of consent merely between him and the debtor; and here the defendant and the plaintiff have transacted together so as to show that both of them acknowledged the relation of debtor and creditor that subsisted between them. Besides this, the defendant himself sold the property he had got from Pinsonault to a Madame Desjardins, and he assigned the price to Molleur, whom he charged with the payment of the debt he had promised to pay to the plaintiff; so that on the whole it is quite evident that the defendant has no case. There was a point as to whether the registration of this delegation operated acceptance. It has been held that it did; it was so held in *Patenaude & Lerigée dit Laplante*, by Lafontaine, Ch. J., but it is not necessary to adjudge that point now. We confirm the judgment in the present case, with costs.

Judgment confirmed.

Judah & Branchaud for plaintiff.

E. Z. Paradis for defendant.

SUPREME COURT OF CANADA.

Reeves v. Geriken.

The following is an extract from the opinion delivered by Taschereau, J., in the Supreme Court, for the majority of the Court, in the case of *Reeves* v. *Geriken* (see 2 L. N. 67), in which the Supreme Court ordered an *expertise*. The extract is from a copy of notes in the possession of counsel :—

But the direct question raised here is whether Reeves, having sued Geriken hypothecarily, can now sue him personally for his share of the price of the sale made by Quesnel to him and to others, on the acceptance she has made since her hypothecary action and the abandonment thereon by Geriken.

In France, an abandonment may be made without a demand of it being made by a mortgagee, and the authors treat extensively the question whether an abandonment can be made voluntarily and be forced upon the mortgagees, when the price of sale is still due by the holder of the property. But that is not the question here. Reeves herself has demanded from Geriken the abandonment of this property, and he has abandoned it only upon her own summons to him to do so.

Of course, if it was only for his share of the price of sale that he had been sued, there would be no question that Geriken could never rid himself of his obligations under the contract of sale, but he has been sued hypothecarily and has abandoned for Quesnel's share of the price as well as for his own. Now, the authorities seem to me clear against Reeves' right, under such circumstances, of now asking against Geriken a personal condemnation for his share of the price of sale. Troplong, (Prescript. Nos. 797, 813, 823-2), has no doubt on

this. Pont. (2 Priv. et hyp. suite de Marcadé, Nos. 1135 and 1180, and authorities there cited) agrees with Troplong, and says that the jurisprudence has settled the point according to Troplong's views.

See also, 7 Toullier, pages 383, 385, and 7 Boileux, pages 563, 580, 581 et note 2. 3 Aubry et Rau, pages 446 and 447, 31, Laurent, 280 à 284, 291 and 292.

In a case of Hulot *v.* Aujubault decided by the Court of Appeals, Orléans, on the 28th of May, 1851, it was especially held that if in such a case a personal creditor sues hypothecarily, he loses his personal action.

I would refer also to the case of Duplessis *v.* Poulet and Verna *v.* Roy, decided in the same Court in 1847. These three decisions are to be found in *Devilleneuve & Caret* (1851), pages 521 *et seq.* 2nd part.

The case of *Geoffroy* v. *Duplessis*, decided by the *Cour de Cassation* on July 1st, 1850 (Dalloz, Dic. de Jurisp., 1850, page 177 and the notes to it), may be also cited as being on questions relating to this one. There the surrender of the property was annulled because the price of sale was more than sufficient to pay the mortgages. There can be no such question raised in the present case; the sum due by Geriken was not sufficient to pay Quesnel's debt.

If he had paid his share he would have had to pay Quesnel's share, besides paying two shares, the half of the price, instead of one share, the fourth of the price. He could not, by paying his share of the price of sale, free the property from the mortgage lying upon it for Quesnel's share of this price. He could surrender the property, and thereby free himself from his own personal obligations at the same time as from the mortgage upon the property for Quesnel's share. Reeves cannot complain of it, since she herself gave him the option to surrender the property, and Quesnel (or Reeves in his name) cannot either complain of it, since he has lost his right of action against the defendant for the price of sale, by not fulfilling his share of the contract of sale, that is to say, his obligation of warranty towards the defendant against all trouble and hypothecs. Laurent (31, No. 283.)

The case of *Dubuc* v. *Charron* (9 L.C.J., 79), decided by Mr. Justice Badgley at Montreal in 1865, is precisely in point, and maintained the same doctrine.

The case of *La Société Permanente de Construction* v. *Larose* (17 L.C.J., 87), in Review, Montreal, 1871, though not exactly on facts similar to those in the present case, virtually decides the point in the same sense as *Dubuc* v. *Charron*. There the purchaser had specially stipulated that he would have the right to surrender the property, but the Court in its *considérants* says that this was a right which he had by the operation of the law.

Then there is the case of *La Société de Construction* v. *Desautels* (2 Legal News, 147), decided in April last by the Court of Review at Montreal, where it was held that hypothecary creditors, whom a purchaser had obliged himself to pay by his deed of purchase, forfeit their rights to a personal action against him by suing him hypothecarily.

I refer also specially to 20 Duranton, Nos. 252 to 257.

It appears to me that there could be no doubt upon this question of law. Another possible point of view in this case is this: Reeves accepted the delegation only after Geriken had surrendered the property on the hypothecary action. Till then Quesnel was alone Geriken's creditor. 7 Toullier, No. 286. He could till then have revoked that delegation (Art. 1029, C.C.), and even without doing so, and notwithstanding the delegation, he could sue Geriken for the price of sale, if any was due. *Mallett* v. *Hudon*, 21 L.C.J., 199. Reeves could never against her will be bound to accept this delegation. The question whether the registration was a sufficient acceptance of the delegation cannot be raised here, because she never intended to avail herself of the delegation till she accepted it by the deed of December 4th, 1877. On the contrary, she virtually refused the offer of this delegation by proceeding hypothecarily. It may be that under certain circumstances registration of a deed containing a delegation may be invoked by the party to whom the delegation is made, as an acceptance or equivalent to an acceptance of it, but it cannot be contended that such registration operates a forced acceptance of the delegation, and imposes it against his will on the creditor. Here it is only by the deed of December 4th, 1877, that Reeves accepted this delegation. But at this date Geriken owed nothing. The contract between him and Quesnel had been resiliated. He was entirely relieved from his price of sale, so that when Reeves accepted the delegation she was too late; Geriken had been freed from his obligations.

But now as to the question of fact, I have so far supposed that Geriken had been evicted from the whole of the property he bought from Quesnel. But is that so? Certainly not, etc.