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*Feb. 4.
*May 2.

OCTAVE GAGNON AND ABEL GAGNON (DEFENDANTS) ..... } APPELLANTS;

AND

NICHOLAS BELANGER (PLAINTIFF).. RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN REVIEW, PROVINCE OF QUEBEC.

Title to land—Vente à réméré—Security for loan—Time for redemption—Promise of re-sale—Condition—Equitable relief—Pleading—Waiver—New points on appeal—Practice—Arts. 1549, 1550 C.C.

Where the right to redeem lands conveyed *à droit de réméré* as security for a loan has not been exercised within the stipulated term, or an extension thereof, the purchaser becomes absolute owner and there is no power in the courts of the Province of Quebec under which an order may be made which could have the effect of extending the time limited for redemption.

After the expiration of the time limited for redemption of lands conveyed *à droit de réméré*, as security for a loan, the purchaser in a letter written to the vendor, requested payment of the loan before a date mentioned therein and, in default of such payment, insisted upon the rights granted by the conveyance.

Held, that the letter might be considered as a promise of re-sale of the lands to the vendor which lapsed on failure to make the payment within the time therein stipulated.

Duff J. took no part in the decision of the appeal.

Per Fitzpatrick C.J. and Brodeur J.—Questions which have not been raised or brought to the attention of the courts below ought not to be considered on an appeal to the Supreme Court of Canada.

APPEAL from the judgment of the Superior Court, sitting in review, at Quebec, affirming the judgment of Letellier J., in the Superior Court, District of Roberval, maintaining the plaintiff's action with costs. Mignault, one of the defendants, as security for the

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* PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

re-payment of a loan, executed a deed of sale of his lands to the plaintiff's vendor reserving to himself the right to redeem the lands so sold within a specified time. He did not do so and, after the time fixed for redemption had expired, the agent of the purchaser *à réméré* wrote a letter to Mignault demanding payment of the sum loaned before a date mentioned and notifying him that, unless it was paid within that time, the rights of the purchaser under the deed would be exercised. Owing to mistakes in transmission of the money through the mails, the payment was not made until after the date mentioned in the letter, when, as the property had been sold to the plaintiff in the meantime, the money forwarded in payment was refused and returned to Mignault. Sometime prior to the expiration of the time for redemption, Mignault had made a donation of the lands in question to Octave Gagnon, one of the defendants, and granted a right of passage over the lands to the other defendant. The plaintiff, having registered the deed conveying the lands to him, brought action, *au pétitoire*, to recover the lands against Mignault and the two other defendants, now appellants. Mignault, appearing separately, filed a defence to the action offering to pay the amount due on the loan but did not do so nor deposit the money in court and, finally, he suffered judgment to be rendered against him *ex parte*. The other defendants filed a joint defence to the action and brought the amount due into court, asking for special relief in the circumstances.

Belcourt K.C. and *Chevrier* appeared for the appellants.

A. Lemieux K.C. and *Arthur Bélanger* for the respondent.

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THE CHIEF JUSTICE.—In this case the plaintiff, now respondent, claims to be the owner of a lot of land in possession of the defendant Mignault who is not a party to this appeal. The questions to be determined are:

(a) Whether the transactions which passed between the plaintiff's auteur, Dame Marthe Bourgard, and her agent Turcotte on the one hand, and the defendant Mignault on the other, are such as to prevent plaintiff from asserting his title as owner to the land;

(b) Whether by reason of the course of the proceedings in the courts below the present appellants are precluded from asserting their claim to what, in a legal system different from that which prevails in the Province of Quebec, would be called *equitable relief*.

I state the questions thus broadly so as to include a new and interesting point raised by Mr. Justice Brodeur and which apparently did not occur to any of the counsel in the case. It is not referred to in the factums, was not mentioned at the argument here and passed unnoticed in both courts below. Assuming that it is properly before us, I will endeavour to deal with this new point when in the examination of the evidence I reach the letter out of which it arises.

The issues raised by the pleadings and decided in both courts below offer very little difficulty. We are all, I believe, agreed that, by reason of Mignault's failure to exercise his right of redemption within the stipulated period, the title to the land vested in Miss Bourgard.

The only real difficulty arises out of the letter subsequently written by Notary Turcotte to Mignault. To appreciate the bearing of that letter it will be necessary to consider all the facts as they appear on the record.

On the 9th October, 1908, by deed passed before Turcotte N.P., the defendant Mignault sold to Dame Marthe Bourgard a plot of land described as lot No. 49 B., 6th range of the cadastre of the Township of Normandin. The sale was made subject to a right of redemption exercisable within five years and purports to convey "tous les droits, intérêts, titres et prétentions et améliorations" that the vendor had in the lot described. All payments under the deed were to be made at the domicile of the purchaser at St. Michel de Bellechasse, many miles distant from the residence of the vendor who remained in possession of the property sold, and for the convenience of both parties it was agreed that the notary would be authorized to receive all the payments which the deed called for. The right of redemption was not exercised within the delay, which expired Oct. 9th, 1913, and, thereupon, Miss Bourgard remained absolute owner of the property (article 1550 C.C.). We are all, I understand, agreed that the stipulated term in a deed like the one under consideration must be strictly observed and that it is not within the power of the court to extend it. (Articles 1549 and 2248 C.C.).

On the 8th November, 1913, Turcotte wrote Mignault to say that his client wanted her money and that, if not paid before the twentieth of that month, she would be obliged to sell her interest in the property. Not having received an answer to this letter, Miss Bourgard on the 11th December, 1913, sold the property to the plaintiff, respondent, who brought this petitory action in April, 1914, against Mignault and the two appellants, Octave and Abel Gagnon. The latter were brought into the case as donees of the property by deed from Mignault passed Sept. 4th, 1911.

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Mignault appeared in the action separately, moved for particulars as to the circumstances under which the property was acquired by the plaintiff—and then gave notice of his intention to refund the amount received by him when the sale "à réméré" was made with interest and costs (sauf à parfaire). This notice was filed on the 6th June, 1914. Apparently the offer was not acted upon; no money was tendered or deposited in court. On the 12th June, 1914, the case, on the issue with Mignault, was inscribed for proof and hearing on the merits *ex parte*. And judgment was rendered declaring that Mignault had forfeited his right to re-purchase and that plaintiff was absolute owner of the property. From that judgment there has been no appeal. Much importance was attached, I think rightly, in both courts below to that judgment in its bearing upon the issue with the appellants.

In November, 1914, the appellants filed their joint plea alleging that the "vente à réméré" was merely a disguised loan, that the property was really worth over $1,100 and that within the stipulated period (13th November, 1913), the amount due in capital and interest was sent by registered mail to Turcotte who in the interval had removed from St. Cyrille de Normandin to Quebec, but being improperly addressed the letter did not reach its destination and was returned, after December 20th, 1913, by the post office authorities to the sender, Mignault, who again forwarded the money to Turcotte at his right address; that the latter improperly refused to accept the money on the ground that the delay had expired; and the defendants, Gagnon, brought the amount due into court with their pleadings.

On these issues the parties went to trial, and the

facts as alleged were either admitted or proved by oral and documentary evidence. The trial judge maintained the action on the ground that the right of redemption not having been exercised within the stipulated delay the deed of sale to Miss Bourgard became absolute, and, consequently, the deed of donation by Mignault to appellants was without effect. He also held that the *ex parte* judgment against Mignault was a complete bar to any rights which the appellants might have acquired under the deed. This judgment was confirmed on appeal to the Court of Review.

This is undoubtedly a hard case. The property is apparently worth more than the amount paid for it and the evident intention of the parties was that the title in the property should return to the seller when he had paid his debt. The position is made more difficult by the *bonâ fide* attempt of Mignault to honestly fulfil his obligations frustrated by the unfortunate mistake made by the postmaster in addressing his letter to Turcotte, a mistake which is easily understood when we take into account the illiteracy and lack of familiarity with affairs of men in their position. Mignault, however, when notified by the notary that his second letter arrived too late, took no steps to assert his rights alleging the circumstances under which he had failed to meet his obligations. Had he done so, it is conceivable that, notwithstanding the very stringent provisions of the Code, some measure of relief might have been given him. But, as the judges below point out, he remained silent until towards the end of April, 1914, when the respondent brought this suit and then he was content to serve the notice to which I referred without giving effect to his alleged intention to refund the purchase price and he did not bring the money into court. He allowed judgment

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ordering him to give up the property to go against him *ex parte* and no attempt has been made to have that judgment set aside. It is therefore *chose jugée* as to him. The appellants are in no better position than Mignault. By their deed of donation, made subsequent to the sale to Miss Bourgard, they acquired Mignault's rights, such as they were at that time, and they could in law acquire nothing more (*Sirois* v. *Carrier*(1); *Levasseur* v. *Pelletier*(2); *Ménard* v. *Guibord*(3)). When the delay expired Mignault lost his rights and appellants' title derived from Mignault must have the same fate.

In these circumstances I agree entirely in the conclusion reached by the judges of both courts below. It is impossible to give appellants any relief. Upon its true construction the deed by Mignault to Bourgard must be held to operate as an absolute sale to which was attached a conditional right of re-purchase to be exercised within a fixed delay which, as I have already said, the court has no power to extend (*Shaw* v. *Jeffery*(4)).

Laurent with his usual lucidity of thought and expression says:

> Dans notre droit moderne les juges ne peuvent déroger aux conventions des parties; c'est une loi pour eux comme pour les contractants.

The whole subject is discussed in *Salvas* v. *Vassal*(5), approved of in *Queen* v. *Montminy*(6), at page 490.

Here Mr. Justice Brodeur raises, as I have already said, an interesting and difficult question as to the effect of the letter written by Turcotte on the 13th November, 1913, which reads as follows:

(1) Q.R. 13 K.B. 242.
(2) Q.R. 40 S.C. 490.
(3) Q.R. 31 S.C. 484.
(4) 13 Moo. P.C. 432.
(5) 27 Can. S.C.R. 68.
(6) 29 Can. S.C.R. 484.

Monsieur Romuald Mignault, Cultivateur,
Normandin,

Cher Monsieur:—

En arrivant de Normandin, j'ai trouvé ici une lettre de la personne qui vous a prêté les $300 par mon entremise, qui m'informe qu'elle a absolument besoin de son argent. *Si vous ne pouvez pas le lui rembourser, elle sera forcée de vendre ses droits.*

Or comme vous le savez, c'est un acte à réméré que vous avez, et il serait fort embêtant pour vous que celà tomberait à des personnes qui aimeraient à faire de la misère, car le tout est dû depuis le 20 octobre dernier.

J'espérais pouvoir vous rencontrer à mon voyage à Normandin, mais je n'ai pu vous voir. On m'a dit que vous n'étiez pas à l'église, quand je me suis informé de vous.

Dans tous les cas, je compte que vous y verrez d'hui à une dizaine de jours, car passé le vingt novembre ce sera trop tard.

Votre bien dévoué,

J.S.N. Turcotte.

At the date of this letter Mignault was in default and Miss Bourgard was the indisputable owner of the property. She was free to do with it as she chose. This letter must be read with the following admission made by the parties at the trial:

Les parties admettent que le notaire Turcotte qui a agi comme notaire sur la vente à réméré consentie par le défendeur Mignault en faveur de Mademoiselle Bourgard était *autorisé à donner un délai jusqu'au vingt (20) de novembre mil neuf cent treize (1913), pour retraire la propriété* et autorisé à recevoir l'argent pour Mademoiselle Beauregard, et que l'autorisation pour prolonger le délai était donné par Mademoiselle Beauregard.

Taken together, it seems to me the letter and the admission evidence an intention on the part of Miss Bourgard not to insist upon enforcing her strict rights under the deed of sale if the vendor would pay the amount of the purchase price of the property on or before the 20th November, 1913, or, in other words, the purchaser agrees to extend until that date the period within which the right of redemption may be exercised by the vendor. That is the construction put upon the letter at the time by both parties. Mignault says when examined as a witness, that

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immediately on its receipt he went to the bank, drew out his money and sent the amount he owed by post-office order to Turcotte.

In their plea to the action of revendication of the property, the present appellants say

> Que le ou vers le 8 novembre 1913, le notaire Turcotte, agent de Delle. Bourgard, avertit le défendeur Mignault que *le délai pour le réméré était prolongé jusqu'au vingt novembre, 1913.*

In the suit as brought the plaintiff's demand is in revendication of the property and Mignault, to whom Turcotte's letter is addressed, declares his intention to refund the money but without giving effect to his good intention. He does not invoke the letter or allege that he acquired under it any rights to the property or that it in any way changed the position except with respect to the delay within which he might exercise his right of redemption. My brother Brodeur refers to Troplong, Vente, (at page 220, *post*,) where it is said that the legal effect of such a letter would be equivalent to a promise of sale of the property to Mignault. The same opinion is expressed by other writers collected in Guillouard, "Traité de la Vente," Vol. 2, pp. 190 and 191, art. 654. It will be found, however, on reference to the text writers that they are not in accord. I would draw special attention to this very significant sentence in Beaudry "Vente," No. 1636, p. 541:

> Du moins la prolongation conventionnelle du terme ne pourrait porter aucune atteinte aux droits des tiers qui auraient acquis de l'acheteur.

It would seem that all the authors are preoccupied with the fear that the rights acquired by third parties in the interval between the expiration of the stipulated term and the date of the document granting the extension may be prejudiced. But assuming that Trop-

long's theory is accepted and that at the expiration of the period there can be no extension of the right of redemption, and that the new agreement is to be considered as equivalent to a promise of sale, I cannot, even in that view, see how it is possible to give the appellants any relief for two reasons which seem to me unanswerable.

At the time the letter in question was written the stipulated delay had expired and Miss Bourgard had become absolute owner of the property and, as a necessary consequence, any rights acquired by the appellants under the deed of donation from Mignault lapsed. The most that can be said is that the letter operated as a promise to sell the property to Mignault on condition that he should take advantage of the offer before November 20th, 1913, which he failed to do (Pothier, "Vente," No. 480; *Vide* Fournier J in *Grange* v. *McLennan*(1), at pages 393 *et seq.*, referring to Dorion C.J. in the court below. Refer also to Troplong, at page 394). Further, when this suit was brought, instead of taking advantage of the new opportunity afforded him to redeem his property or to assert his right under the presumed promise of sale, Mignault was content to give the notice above referred to and allowed judgment to go against him by default. This judgment, as held by the Court of Review, disposes of any right Mignault had in the property, and, as I have already said, appellants' title is derived from, and is dependent on, that of their *auteur* Mignault.

The second objection which, as at present advised, seems to me absolutely unanswerable, is that the respondent having bought the property from Miss Bourgard who was, at the time, absolute owner, his

(1) 9 Can. S.C.R. 385.

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registered title cannot be affected by the unregistered promise of sale given to Mignault. There is nothing in the evidence to shew—and it is not suggested—that respondent had any knowledge of the Turcotte letter.

I have gone into this at some length because this undoubtedly is a very hard case and hard cases have a tendency to make bad law. Our duty, of course, is to do justice, but "according to law."

I am disposed also to think that this new point should not be considered now. The attention of counsel has not been directed to it and we are not, on this record, in a position to do justice to all the parties and to the courts below. *Vide The "Tasmania"*(1), *per* Lord Herschell at page 225; *Browne* v. *Dunn*(2); *Dufresne* v. *Desforges*(3); *Connecticut Fire Ins. Co.* v. *Kavanagh* (4); *Cleveland* v. *Chanbliss* (5).

Another question was raised on this appeal which does not seem to have been brought to the attention of the courts below although I find it mentioned in the factums in Review.

It is said, as far as I can understand the facts, that the lot of land could not be sold by Mignault without the consent of his wife.

In fact, there is nothing to shew that in October, 1908, Mignault was married. He does say, when examined as a witness (in 1914), that he was married for a second time, and it also appears in the deeds to appellants that he was married in 1911, but this record is silent as to his status in 1908.

Further it is impossible for me to understand this

(1) 15 App. Cas. 223.
(2) 6 R. 67, at p. 75.
(3) 47 Can. S.C.R. 382.
(4) [1892] A.C. 473.
(5) 64 Ga. 352.

point by reference to 6 Edw. VII., ch. 21, section 1. (Que.) That section reads:

1. Article 1744 of the Revised Statutes, as enacted by the Act 60 Victoria, chapter 27, section 1, is amended by adding thereto the following clause:

The owner of the homestead may, however, under the same conditions and upon observing the same formalities as for its alienation, hypothecate it and thereby render it subject to seizure and sale.

Then 60 Vict., chap. 27, section 1, reads as follows:

1. Articles 1743, 1744 and 1745 of the Revised Statutes are replaced by the following:

1743.—No public lands, granted to a *bonâ fide* settler by instruments in the form of location tickets, licenses of occupation, or certificates of sale or other titles of a similar nature or to the same effect, in virtue of chapter sixth of title fourth of these Revised Statutes, respecting the Department of Crown Lands and the matters connected therewith, and according to the orders-in-council and regulations passed in virtue of the said chapter, shall, so long as letters-patent are not issued therefor, be pledged or hypothecated by judgment or otherwise, or be liable to seizure or execution for any debt whatsoever, except for the price of such lands, nor can the buildings, constructions and improvements thereon, including the mills which the settler makes use of for his own proper service, notwithstanding articles 1980 and 1981 of the Civil Code, and articles 553 and 554 of the Code of Civil Procedure.

1744.—Every settler upon public lands in the province, who has received letters-patent for such land, shall hold such land, provided it does not exceed 200 acres in extent, and if it does so, then 200 acres thereof, together with the buildings, constructions and improvements thereon, including the mills employed of by such settler for his own use as a "homestead."

No such homestead shall, during the life of the original grantee, of his widow and of his, her or their children and descendants, in the direct line, be liable to be seized and sold for any debt whatsoever.

The proprietor of a homestead may alienate the same either by gratuitous or onerous title.

However, if married, the notarial consent of his consort is required, and, if the latter is dead, and the proprietor has minor children, the consent of a family council, homologated by the Superior Court of the

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district in which the homestead is situated, or by a judge of that Court.

But the statute of 9 Edward VII., chap. 30, section 5, provides:

No acts or transactions made and entered into in virtue of articles 1743 and 1744 of the Revised Statutes as contained in the Act 60 Victoria, chapter 27, section 1, amended by the Act 6 Edward VII., chapter 21, section 1, shall be deemed to have been invalidated by this Act.

The proprietor of a homestead and of public lands in virtue of articles 1743 and 1744 of the Revised Statutes, has the right, and is declared to have always had the right to alienate by gratuitous or by onerous title, even without the consent of his consort expressed in a notarial deed.

This Act shall not affect pending cases which may have been taken before the coming into force thereof.

Although it does appear that the lot in question was acquired from the Crown under location ticket there is nothing to shew that the patent had not issued previous to the date of the sale to Miss Bourgard. On the contrary, all the presumptions arising from the recitals in the deeds of donation point to the title having issued before 1908.

I am of opinion that the appeal should be dismissed with costs.

DAVIES J.—With great reluctance because of the extreme hardship to the appellant under the facts as proved of maintaining the judgment appealed from, I feel myself obliged under the law as it stands in the Province of Quebec to concur in dismissing this appeal.

IDINGTON J.—I regret to find that this is one of those cases in which the law does not enable the court to execute justice and hence that this appeal must be dismissed.

DUFF J.—Not having heard the whole of the argument I take no part in the judgment.

ANGLIN J.—But for the letter of Notary Turcotte, written on the 8th November, 1913, giving the appellants until the 20th November, 1913, to pay the sum of $300 and interest, it would appear that their rights had become extinguished and the title under which the respondents hold absolute on the 20th October, 1913. Arts. 1549, 1550 and 2248 C.C. That letter probably did not effect a prolongation of the right of redemption (droit de réméré) but operated only as a unilateral promise of re-sale (7 Mignault, 159). If, however, the letter could be regarded as having extended the right of redemption, the extended right would be of the same nature and subject to the same conditions, and, the money not having been paid, it would have expired on the 20th November, 1913, with the like consequences. If, on the other hand, the letter merely amounts to a promise of re-sale, that lapsed on non-payment of the price within the delay stipulated. *Taché* v. *Stanton* (1); *Marcoux* v. *Nolan* (2); *Munro* v. *Dufresne* (3); *Foster* v. *Fraser* (4); Cujas, 25 Dig.; Pothier, "Vente," No. 63.

BRODEUR J.—Le 20 octobre, 1908, Romuald Mignault vendait avec faculté de réméré à Mlle. Beauregard l'immeuble en question en cette cause moyennant une somme de trois cents piastres ($300).

La faculté de réméré devait être exercée le ou avant le 20 octobre, 1913, en remettant à l'acheteur la somme de trois cents piastres ($300), plus l'intérêt de 6% par an. Il était convenu que pendant ce laps de temps Mignault demeurerait en possession de l'immeuble, qu'il l'entretiendrait en bon état de répar-

(1) Q.R., 13 S.C. 505.
(2) 9 Q.L.R. 263.
(3) M.L.R., 4 Q.B., 176.
(4) M.L.R., 6 Q.B., 405; 4 S.C., 436.

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ations locatives, qu'il paierait les taxes municipales et scolaires et, en plus, l'intérêt sur la somme de $300.

Cette vente fut enregistrée au bureau d'enregistrement du comté.

Le 4 septembre, 1911, Mignault a donné entr'autres la propriété en question à son beau-fils, Octave Gagnon, l'un des appelants dans la présente cause, avec obligation de garder, nourrir, vêtir le donateur et son épouse pendant leur vie ou bien de leur payer une rente annuelle de $100 par année et de payer leurs dettes hypothécaires et autres affectant la dite propriété.

Il est bien évident que la somme de trois cents piastres payée par Mlle. Beauregard ne représentait pas la valeur de la propriété et que dans l'intérêt des parties on aurait eu recours à la vente avec faculté de réméré afin de pouvoir garantir davantage le remboursement de la somme que Mlle. Beauregard prêtait à Mignault.

Le contrat comportait que les paiements du capital et de l'intérêt devaient se faire au domicile de l'acheteur à réméré. Les parties ne demeurent pas dans la même région. Une distance d'environ 200 milles les sépare. Et alors il est admis que le notaire qui avait passé le contrat et qui demeurait près du vendeur pourrait recevoir l'argent. Le contrat a donc été modifié à ce sujet. Plus tard, le notaire a laissé le Lac St. Jean pour venir demeurer à Québec.

Le 20 octobre, 1913, date fixée par la convention pour l'exercice de la faculté de réméré, le remboursement du capital prêté ne se fit pas et alors, en vertu de l'article 1550 C.C., Mlle. Beauregard demeura propriétaire irrévocable de la chose vendue.

Le 8 novembre, 1913, M. Turcotte, le notaire de

Mlle. Beauregard, écrivait à M. Mignault, lui demandant le remboursement de la somme de $300 et il ajoutait que, s'il ne pouvait pas payer avant le 20 novembre, sa cliente serait forcée de vendre ses droits.

Le 13 novembre, M. Mignault acheta au bureau de poste un mandat pour la somme qui était due en capital et intérêts, et l'envoya au notaire Turcotte, à Québec, à qui les paiements d'intérêts avaient été faits antérieurement, seulement, au lieu d'adresser la lettre à la rue *Hébert*, qui lui avait été indiquée, il l'adressa à la rue *Albert*, et la lettre, après avoir été à différents bureaux de poste n'est revenu à l'envoyeur que le 20 de décembre.

Il ré-expédia de suite le mandat au notaire Turcotte mais dans l'intervalle Mlle. Beauregard avait vendu ses droits à l'intimé en la présente cause, Nicolas Bélanger, le 11 décembre, 1913, et le notaire a alors renvoyé l'argent à Mignault.

Bélanger poursuit maintenant, au pétitoire, Mignault et Octave Gagnon et il dirige aussi sa poursuite contre Abel Gagnon parce que Mignault lui avait donné un droit de passage sur la propriété.

Les appelants soumettent que le contrat entre les parties était évidemment un contrat de prêt et non pas un contrat de vente.

Il est vrai que les parties sont entrées en négociations pour un emprunt; mais comme les garanties qui étaient offertes par M. Mignault n'étaient pas suffisantes, je suppose, pour garantir le prêt, il a été convenu qu'on aurait recours à une vente avec faculté de réméré afin de pouvoir rendre certain le remboursement du prêt. Les parties ont accepté cette méthode de contrat et nous ne pouvons pas intervenir pour

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changer leurs conventions faites évidemment avec délibération.

Dans la province de Québec, le réméré n'est généralement stipulé que pour donner une garantie plus sure au créancier qui a prêté son argent et qui ne veut pas courir le risque d'en perdre une partie en faisant les frais nécessaires pour vendre l'immeuble en justice. Ce contrat est légal lors même que le prix de la vente serait bien inférieur à la valeur de l'immeuble, car l'annulation d'un contrat pour lésion d'outre moitié n'existe plus. *Salvas* v. *Vassal*(1).

Il est incontestable que le demandeur, intimé, fait preuve d'un sens moral plus ou moins facile en refusant d'accepter l'argent qui lui a été offert avec ses frais de justice et en insistant pour garder une propriété représentant une bien plus grande valeur que la somme qu'il a déboursée. Il est à espérer que sa conscience lui indiquera un jour la fausseté de sa conduite et l'incitera à réparer le tort et le dommage qu'il cause aux appelants.

J'avais cru au cours du délibéré que l'opinion exprimée par Troplong et autres auteurs sur la nature de la nouvelle convention qui avait été faite entre les parties par la lettre du notaire Turcotte du 8 novembre, 1913, pourrait nous permettre de maintenir l'appel. Mais cette nouvelle convention, suivant l'opinion de ces auteurs, ne pourrait tout au plus être considérée que comme une promesse de vente. Mlle. Beauregard qui serait devenue propriétaire irrévocable, vu le non-exercice de la faculté de réméré, aurait alors par la lettre de son notaire Turcotte promis de vendre l'immeuble en question jusqu'au 20 novembre, 1913. C'était alors au promettant acheteur d'offrir le paie-

(1) 27 Can. S.C.R. 68.

ment du prix de cette promesse de vente dans les délais stipulés. Il ne l'a pas fait, ou plutôt le mandat-poste qu'il a envoyé ici ne s'est pas rendu. *Munro* v. *Dufresne*(1); *Foster* v. *Fraser*(2); *Dechamps* v. *Goold*(3).

On a soulevé devant cette cour aussi que la vente avec faculté de réméré était nulle parce qu'elle n'avait pas été enregistrée au bureau des terres de la Couronne.

Ce point n'a pas été soulevé en cour inférieure et il est possible que s'il l'avait été il aurait donné lieu à une preuve qui aurait détruit toute la force de cette objection. Nous ne pouvons donc pas la considérer dans le cas actuel.

Je suis donc forcé à regret de conclure que l'appel doit être renvoyé avec dépens, tout en formulant l'espoir que le défendeur verra à rendre justice au vieillard et à son beau-fils qui se trouvent privés du fruit de plusieurs années de travail.

Appeal dismissed with costs.

Solicitor for the appellants: *Armand Boily.*
Solicitor for the respondent: *Arthur Bélanger.*

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(1) M.L.R. 4 Q.B., 176. (2) M.L.R. 6 Q.B. 405.
(3) Q.R. 6 Q.B. 367.