

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pierre Guyon dit Lemoine v. Hardoin Lionais, from the Court of Queen's Bench, Quebec, Canada; delivered 14th November, 1874.

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS is an Appeal from a Judgment of the Court of Queen's Bench in Lower Canada, affirming a former Judgment of the Superior Court, which dismissed the Appellant's suit. Their Lordships, on the hearing of the Appeal, were placed in circumstances of unusual difficulty. The Appellant, a French Canadian, and not a lawyer, pleaded his own cause in his own language. He was opposed by two Counsel of eminence and ability, speaking a language which, possibly, he imperfectly understands. It is due to those gentlemen to say that they argued the case with remarkable fairness and candour, and gave their Lordships all the assistance in their power. It is obvious, however, that their Lordships as well as the Appellant were nevertheless at considerable disadvantage. To remedy this as far as might be, they, at the close of the argument, undertook to examine carefully this complicated and voluminous record; and, particularly, to read and consider the elaborate and able factum presented by the Appellant's Counsel to the Court of Queen's Bench, with that of the Respondent. This they have now done, and will proceed to give Judgment on the Appeal.

The suit was brought by the Appellant on the

29th of October, 1856, as the assignee of the rights of a lady, whom it will be convenient to designate throughout this judgment as Dame Marguérite Roy, to set aside a deed of sale executed by her on the 30th of October, 1846; and the broad questions raised before their Lordships were :—

1st. Whether, if Dame Marguérite Roy had herself been the plaintiff on the record, she would have been entitled to have this deed set aside, or to any other relief in this suit; and

2ndly. Whether, if she would have been so entitled, the Appellant is entitled to any relief at all in the suit; or at most to any relief except that which is obtainable under the “exception des droits litigieux,” which forms part of the record.

Their Lordships in dealing with these questions propose to divide the first of them; and to consider separately, first, whether Dame Marguérite Roy could successfully have impeached this deed of sale immediately or shortly after its execution; and secondly, how far her right to do so would have been affected by the subsequent transactions; and the lapse of time between the date of the deed and the commencement of the suit.

The history of the transactions which lead up to the sale, is shortly as follows :—

Marguérite Roy was first married to one Jean Marie Cadieux, who died in 1863, leaving two sons, viz., Pantaléon and George, and two daughters, viz., Henrietta, the wife of the Chevalier de Lorimier, and Christine Rachel, the wife of Jean Baptiste Chamilly de Lorimier, a person who plays a considerable part in the history of this case.

On the death of her husband, Dame Marguérite Roy became entitled to one moiety of the property which they had held and enjoyed *en communauté*; the four children taking the other moiety in equal shares.

Part of that property consisted of about fifty acres of land, situate at Côteau Baron, in the parish of Montreal, and on the outskirts of the then city. This had been derived from the parents of Dame Marguérite Roy, and was charged with an annuity of 50*l.* in favour of Dame Josephta Roy, the mother of Marguérite, and the surviving donor of the land.

On the 16th of April, 1834, Henrietta conveyed her share in this land to her brother-in-law,

Chamilly de Lorimier, who will henceforth be called Lorimier.

On the 20th of October, 1834, a partition was made between the widow, her two sons, and Lorimier, as assignee of Henrietta's share and the representative of his wife, then a minor. The effect of the "Acte de Partage," which is at page 43 of the record, was to divide the land into lots, and to assign certain lots to the different sharers according to their respective interests in severalty.

On the 8th of April, 1835, the widow sold and conveyed her moiety of the land, as ascertained by the partition, to one Pinsonnault, a land-jobber or speculator, who, by conveyances, dated respectively the 26th of April, the 1st of May, and the 18th of May, 1835, also acquired the shares of George, Pantaléon, and the Lorimiers; and thus became the proprietor of the whole plot of land, subject to the liens or privileges of the different vendors in respect of the unpaid purchase-money of their respective shares.

On the 13th July, 1835, Dame Marguérite Roy had the misfortune to contract a second marriage, with one Regnier, who appears on the evidence of both sides to have been a person of slender means and indifferent character. The settlement made in anticipation of this marriage was dated the 6th of July, 1835 (page 37), and its effect was to make the future consorts separate in estate, excluding all community of property, except such as might be implied in the words, "Cependant les bénéfices et augmentations appartiendront de plein droit par moitié aux dits futurs époux et leur sortiront nature de propre, et aux leurs de leur côté et ligne respectivement." On the day before the execution of this contract, Madame Marguérite Roy had been induced to sign certain promissory notes in favour of Regnier, which he indorsed to Pinsonnault, who indorsed them over to one Thomas Storrow Brown.

On the 19th of April, 1837, Brown recovered judgment in two actions on these notes against Regnier and his wife, for sums amounting together to 452*l.* 8*s.* 4*d.* with subsequent interest and costs.

On the 17th April, 1838, one Francis, of Birmingham, recovered judgment against Brown, who had then become insolvent, and his partner in a hardware business, for the sum of 4,086*l.* 4*s.* 7*d.*

On the 4th of April, 1838, Pinsonnault, having also become insolvent, and failed to perform his part of the contract for the purchase of Dame Margu rite Roy's moiety of the land at Coteau Baron, she, suing with her husband, R gnier, obtained a decree for the rescission of that sale, and recovered back her original moiety of the land; and on the 18th of April, 1838, she compromised a suit with her children touching the succession of Jean Marie Cadieux, and under that compromise acquired all the rights of rescission which George Cadieux and the Lorimiers possessed against Pinsonnault in respect of their shares in the same land.

She thus became again the proprietor of her own moiety of the Coteau Baron property, and acquired the rights of the unpaid vendors in $\frac{2}{3}$ ths of the other moiety; and this state of things continued up to 1844.

In 1844 Margu rite Roy made a lottery of her moiety of this property, which she divided for that purpose into eighteen lots. In this way she disposed of some lots, but in every case the purchase money was not paid down, but was stipulated to be paid by instalments at future dates; the usual rights and privileges of an unpaid vendor being reserved to her. It would seem that, after these transactions, thirty-one of the lots originally defined by the "Acte de Partage" of 1834 remained in her possession.

In the meantime no steps had been taken by Brown, or any person representing him, to enforce the judgments which he recovered in 1837 against Dame Margu rite Roy and her husband. But, on the 17th of October, 1844, R gnier obtained from one Forster, the constituted attorney of Francis, an assignment of the judgment recovered by Francis against Brown for 4,086*l.* 4*s.* 6*d.* Armed with this judgment, R gnier, in the name of Francis, took out execution against Brown, attached thereunder the judgment debt due from himself and Dame Margu rite Roy to Brown, and on the 30th of September, 1845, obtained an order that he (R gnier) and Dame Margu rite Roy, as garnishees, should, each of them, within fifteen days, pay the 452*l.* 8*s.* 4*d.*, with interest calculated from various dates in reduction of the judgment-debt nominally due to Francis.

Regnier having thus acquired the power of taking out execution against his wife's property in the name of Francis, did nothing further in that way himself. But on the 19th of November, 1845, being in prison, he assigned to the Respondent, who then, for the first time, comes upon the scene, the benefit of this order against the garnishees. The consideration expressed in this assignment was 250*l.*, alleged to have been paid down, and an undertaking to pay the balance of the 452*l.* 8*s.* 4*d.* in goods. The act of assignment also bound the assignee to pursue the execution against certain persons indebted to Dame Margu rite Roy for the purchase-money of some of the lots sold by the lottery; and by two further assignments, dated respectively the 30th of December, 1845, and the 14th of January, 1846, the rest of the Judgment-debt of Francis, and all rights under that Judgment were transferred by Regnier to, and became vested in, the Respondent.

The Respondent having thus acquired the power of taking out execution against the property of Margu rite Roy in the name of Francis, exercised it in the following manner:—In December 1845 he attached in the hands of Ovide Le Blanc, William Ermatinger, Joseph Beaudry, Prudent Beaudry, and Joseph Caspard Laviollette, the moneys due from them to Dame Marguerite Roy, or to Regnier; being in part the sums due for the purchase money of the lots sold to them respectively under the lottery; in August 1846 he attached a similar debt due to Dame Margu rite Roy from MacPherson, Crane, and Company; but on the 24th of October, 1846, he withdrew this last execution; and, lastly, in September 1846, he took out execution against some of the lots of land in Margu rite Roy's own possession. A. M. Beaudry acted as his advocate in the execution against MacPherson, Crane, and Co.; it does not appear who was the advocate or attorney through whom the other seizures were made.

This was the position of the parties when the deed of sale of the 30th of October, 1846, which is now impeached, was executed.

This deed (p. 38), which was in the notarial form, and was acknowledged before two notaries public, named Martin and Lappare, purported to

be made by Dame Margu rite Roy, being separate in estate from her husband, under her marriage contract, but duly authorized by him, and to sell and convey to the Respondent,—

1st. Twenty-seven of the thirty-one lots forming part of the vendor's original moiety in the C teau Baron property, which remained in her possession ;

2ndly. All the claims and rights which, by virtue of the assignment made to her under the family compromise, she possessed, and could assert against the lots sold by George Cadieux, and the Lorimiers to Pinsonnault ;

3rdly. All the debts and claims enumerated in Schedule A to the deed, being the sums due from the several purchasers of lots under the lottery, except MacPherson, Crane, and Co., with all her rights as unpaid vendor in respect of those lots. The gross amount of those debts and claims was 3,125*l.*

As the consideration for this purchase the Respondent undertook,—

1st. To pay to Margu rite Roy on her separate receipt (her husband thereby authorizing her in that behalf) 2,000*l.* by the following instalments : viz., 250*l.* six months after the sentence of ratification, which the purchaser bound himself to obtain at his own cost, and without delay ; 250*l.* one year after the date of such sentence of ratification ; 500*l.* within eight years, calculated from the date of the deed ; and 500*l.* in each subsequent year until the whole 2,000*l.* should be paid, with interest from the date of the deed, payable quarterly, on account of which interest the vendor admitted the receipt of 30*l.*

2ndly. To pay 100*l.* to Regnier, in consideration of whatever rights he might be conveying under the deed, he consenting to his wife's receipt of the 2,000*l.*, and admitting the receipt by himself of the 100*l.*

3rdly. To pay to Dame Josephta Roy in exoneration of the vendors, 68*l.* for the first, and 50*l.* for every subsequent year during her life ; such annuity to be payable quarterly.

4thly. To pay and satisfy within two months after obtaining the judgment of ratification, and in discharge of the vendors, all the debts enumerated in Schedule B to the deed. The gross

amount of these was 1,885*l.* 16*s.* 4*d.*, but they included 750*l.*, the alleged amount of Brown's judgment debts, with the interest due thereon, which was entered as then due to Francis; and M. Beaudry's bill of costs, amounting to 110*l.*

5thly. To pay for the vendor, and in discharge of the Lorimiers, certain claims which "MM. les Ecclésiastiques du Séminaire Seigneurs de l'Isle de Montréal" and the Sisters of the Hôtel Dieu de Montréal, had against the Lorimiers, under certain assignments made on or about the 6th of October, 1835, and the 2nd of November, 1835, to the amount of 100*l.*; it being provided that if these claims should exceed that sum, the purchaser should pay the excess on account of the interest coming from him to the vendor; and that if they should fall short of 100*l.*, he should pay the difference to Dame Marguélite Roy.

The deed contained a stipulation empowering the Respondent to commute the tenure of the lots sold to him, which seem to have been subject to certain seignorial rights, the vendor binding himself to ratify the commutation, and to repay to the purchaser what he should pay for such commutation, in the event of the rescission of the sale. It also reserved power to the purchaser, in the event of the ratification being opposed by creditors, other than those mentioned in Schedule B, to cancel the sale on the terms of being repaid whatever he might have paid under the contract, with interest. It contained a ratification, by Dame Josephtha Roy, of the arrangement touching her annuity, and an acknowledgment that she had received 17*l.* on account of it. And by a clause in favour of the vendor, the Respondent declared that, to secure the execution of all and each of the obligations contracted by him, he had "spécialement et par privilèges affectée et hypothéqué les biens susvendus."

By what is termed a contre-lettre of the same date (p. 114), the Respondents also undertook, first, to cause certain proceedings of MacPherson, Crane, and Co., to be discontinued; secondly, to hold Marguerite Roy harmless in respect of the claims of one Louis Marteau, as cessionaire of Pontaléon Cadieux; Marguerite Roy ceding to the Respondent all the counter-claims which she might

have against Louis Marteau, but reserving to herself any surplus or balance that might be found due to her in respect of such claims and counter-claims ; and, thirdly, to relieve Lorimier from two judgments, one for 60*l.* 13*s.* 6*d.* and the other for 61*l.*, which had been recovered against him by George Storrow Brown. It is to be remarked that, by another deed of the 30th October, 1846 (p. 53), there had been a settlement of accounts between Lorimier and his wife on one side, and Dame Margu rite Roy and Regnier on the other, under which the liability of Lorimier in respect of these judgments, and also in respect of the claims against him by the Seminarists and the Sisters of the H tel Dieu, had been assumed by Dame Margu rite Roy. Hence the stipulations both in the principal deed and in the contre-lettre, which appeared to be in favour of Lorimier, are, in fact, stipulations in favour of Dame Margu rite Roy, and go to swell the consideration payable by the Respondent.

By another and more important contre-lettre (p. 41), which was made on the 3rd of November, 1846, between Regnier and the Respondent alone, it was declared that Regnier had not, in fact, received the 100*l.* the receipt whereof was admitted by him in the principal deed ; that the true consideration for which he had consented to the sale was not that sum, but the undertaking thereby admitted of the Respondent to share with Regnier the ultimate profits of the transaction in equal moieties.

The transaction, therefore, which is impeached is, in fact, embodied in the three last-mentioned documents ; and the question now to be considered is, upon what grounds, if any, Dame Margu rite Roy, immediately or shortly after the date of that transaction, could successfully have impeached it.

It is unnecessary to go at length into the voluminous pleadings in the case, or to consider the dilatory defences and other expedients by which the Respondent is said for several years to have attempted to defeat the suit on which the Appellant sought to set aside the deed. The grounds for rescission may be broadly stated to be fraud, the nature of which will be more particularly stated hereafter, and "l sion au del  de la juste moiti  du prix."

Before going further, it will be well to consider how these points have been dealt with in the Courts below. Mr. Justice Monk in the Superior Court, and three of the Judges in the Court of Queen's Bench, held that the Appellant had failed to establish "lésion;" and that he had also failed to prove any fraud upon which Marguérite Roy or her heirs could have set aside the contract. The two dissentient Judges of the Court of Queen's Bench held that fraud vitiating the contract had been established, and that the Appellant was entitled to take advantage of it, but declined to find that "lésion" had been established. There is, therefore, no finding in the Appellant's favour on the question of "lésion;" and on the question of fraud he has four Judges against him, and but two in his favour.

It is right, however, to observe, that the value of Mr. Justice Monk's judgment is considerably diminished by the error into which he seems to have fallen touching the legal relations of Regnier and his wife. His view (as appears more clearly from the "considerations" of his formal judgment at p. 30 of the record, than from the reasons for that judgment at p. 646,) was, that a partial community existed between the husband and wife; that some of the property sold, and, in particular, the rights against Pinsonnault which had been assigned to Dame Marguérite Roy by the Lorimiers, had fallen into and become part of that community; and that this consideration justified and supported the counter-letter of the 30th of November, 1846. But, upon this point, Mr. Justice Badgley, for the reasons fully stated in his Judgment, and apparently with the concurrence of all the Judges of the Court of Queen's Bench, came to the conclusion that the alleged partial community between Marguérite Roy and her husband had no existence in fact or in law. And that this is the true construction of the marriage contract was not disputed by the learned Counsel for the Respondent at the bar.

Their Lordships may at once dispose of the question of "lésion," as distinct from fraud, by saying, that they are not disposed to dissent from the finding of the Canadian Courts on that point. To ascertain the real value in 1846 of property, which it is admitted on all hands has since risen

enormously in value, would obviously be very difficult, and Mr. Justice Monk was possibly right when he observed: "It may be said with confidence, that the property was worth more than the price agreed to be paid; but how much more, or whether it was worth twice as much, it is impossible to say. In fact, "lésion" as a distinct ground for setting aside the sale, was almost abandoned by the Appellant's Counsel in the Court of Queen's Bench." (See his Factum, at p. 645 of the record.)

The question of fraud is more complicated and difficult of solution.

The case presented on the part of the Appellant in the Court of Queen's Bench, and before their Lordships is, perhaps, most succinctly and neatly expressed in the able Factum of Maître Barnard, at p. 598 of the record. It is there said—

The facts alleged by the Appellant may be summed up, as follows:—

1st. The Respondent in order to possess himself of the property of Madame Regnier, viz., the debts due to her, and the lands described in the bill of sale, seduced Regnier, by promising him a moiety of the profits which might result from the operation.

2ndly. In order to compel Madame Regnier to consent to the sale, the Respondent, amongst other means, seized the property in the name of John Francis, the debt thus turned against Madame Regnier, being a debt paid and extinguished, if it had ever been due by her.

3rdly. Not content with having thus obtained the property for a price, much less than half its value, and payable at long dates, the Respondent contrived by buying the debt for the commutation of tenure, and by means of a fraudulent decree, to cause the property of Madame Regnier to be transferred into the name of his wife, so that the former has never received a farthing of the purchase money, except the 30*l.* paid down; and all the facts of the cause indicate that it was the intention of the Respondent from the beginning to obtain the property without paying the price.

The first of these heads turns chiefly on the effect of the agreement between the Respondent and Regnier, which is proved beyond all question by the counter-letter of the 3rd of November, 1846.

According to the law of Lower Canada, founded on the Custom of Paris, Dame Margu rite Roy could not sell any part of her immoveable property without the special sanction of her husband, or, if that were improperly refused, without the sanction of a Court of Justice; and her husband was utterly incapable of purchasing any part of her separate property for himself. These propositions seem to be established by the authorities cited in the Factum of Maitre Barnard (see pp. 622 and 623 of the Record). Nor do they seem to be impugned in the Court of Queen's Bench by the Respondent, who chiefly rested his defence on this part of the case upon the partial community which the lower Court had, erroneously, as now appears, found to exist between Regnier and his wife.

How, then, do the Judges of the Court of Queen's Bench who decided in favour of the Respondent meet this part of the case? Their reasons are to be found in Mr. J. Badgley's Judgment, at p. 32 of the Supplemental Record.

After setting out the substance of the counter-letter, the learned Judge goes on to say:—

“ Now it is manifest that the sole objects of the sale were the moveable and immoveable private property of Margu rite Roi, in which Regnier had neither share nor right, and that he was a consenting party to the deed for the sake of legal conformity only, to validate her alienation of her *immeuble*. His consent otherwise was of no moment, but given probably to avoid the expense of obtaining judicial sanction for her completion of her consensual contract, had he refused to become a party to the deed; because it will be remembered that Regnier and his wife were not in community as to property but absolutely disconnected for their material interests, except as to the requisite of his consent or authorization for her alienation of her *immeubles*. The property sold was hers, the consideration of the sale was for her personal benefit and use, and in discharge of her indebtedness, and for the receipt by herself of her money consideration of 2,000*l*. As between herself and Lionais the contract of sale was complete and perfect by their consensual agreements between them, and the alleged further consideration to Regnier of 100*l*. mentioned in the deed, or as afterwards referred to by the contre-lettre of 3rd November, was a consideration between Lionais and Regnier, in which she had neither part nor interest, whether the consideration was the 100*l*. of the deed, or the alleged consideration of the contre-lettre.

“ The appreciation, therefore, by Lionais and Regnier, of the necessity for or of the precise value of Regnier's consent to the deed of sale, in which alone his consent figures, is not within this controversy between Lionais and Regnier's wife, which solely questions her consent to the sale, and cannot apply to or affect

Regnier's consent in itself which he has not denied anywhere in the record, nor authorized Lemoine to deny or question for him. At the utmost, the stipulations of the contre-lettre of the 3rd of November, only exhibit Regnier's astuteness for his own advantage, not against his wife or her property, which she had voluntarily passed from herself to Lionais, by the deed of sale for a satisfactory consideration to herself, but against Lionais, as the purchaser from her of that property, then no longer hers, but Lionais', and to have effect only after the full completion by Lionais of all the executory agreements of the deed of sale and contre-lettre of 30th October, 1846, and probably only after long years from that date, and certainly after heavy outlay and advance by Lionais. It is manifest, that the stipulations by Lionais and Regnier of their contre-lettre were apart from and independent of those of the deed of sale in her favour, that they expressly referred to Regnier's consent to the deed of sale alone, the words of the contre-lettre being 'the true consideration for his consent to the deed of sale,' that these words are restrictive and explicit, and manifestly neither caused nor contemplated any interference with the deed of sale, nor any loss or diminution to her of considerations or rights therefrom, but, on the contrary, confirmed both in their integrity, by only allowing operative effect to the agreement of the November contre-lettre, after her claims had been fully liquidated and discharged.

"Under these circumstances she had no interest in those stipulations between Lionais and Regnier, the more so as no stipulations made by them without her consent could possibly affect or jeopardize her rights under the deed. Moreover, Regnier was quite free and competent to contract for his own advantage with Lionais or with any one else, if he did not detriment his wife or her separate property, and as she could not control her husband's private bargains, she could have no resolatory rights over his agreement with Lionais, or over the property of the latter under the contre-lettre, any more than she could have had over the 100*l.* stipulated in the deed of sale, which she did not dispute."

To their Lordships this reasoning is eminently unsatisfactory. It treats the two transactions as separate and independent of each other; the deed of October as effecting a complete transfer of Dame Margu rite Roy's property to the Respondent; the counter-letter of November as a subsequent and independent dealing by the Respondent with the property which he had previously acquired. But this is inconsistent with the admissions of the parties themselves. The counter-letter, though executed a few days later than the deed, expressly declares that the true consideration for Regnier's sanction of and joining in the deed, was not the 100*l.*, but a then existing agreement between him and the Respondent to share in the profits of the transaction; an agreement afterwards embodied in

the counter-letter. The deed then ought to be read as if this, the true consideration for its execution by Regnier, had been expressed in it. And if this had been done, could any Court of Justice have said that the transaction did not sin against the two rules above referred to ; that such a stipulation in favour of Regnier did not render it impossible for him to be the disinterested protector of his wife which the law required him to be ; and did not, in fact, involve such a purchase of his wife's property as the law forbids ?

That this was done not openly, but indirectly, and under cover of a false allegation in the deed, is a circumstance which only serves to impress upon the transaction an additional characteristic of fraud. Nor are these the only inferences to be drawn from the counter-letter. It shows that there was concert between the Respondent and Regnier in order to effect a purchase that was designed to be for the benefit of both ; and thus affords some evidence in support of the Appellant's allegation that the transaction was the result of a conspiracy between these persons to obtain the property at a price below its value ; and possibly without payment of the price stipulated.

The second *résumé* is chiefly founded on the use said to have been fraudulently made of the judgment in Francis *v.* Brown. It has been seen that that judgment-debt was originally purchased by Regnier in October, 1844. The expressed consideration for the assignment was the payment by Regnier of the amount of the principal due on the judgment, being upwards of 4,000*l.* That any such payment was made would be simply incredible, and is not asserted. It was suggested by the Respondent in his evidence, that the real consideration was a charge of 200*l.* in favour of Francis upon part of the Cadieux property. In that case the consideration would be one moving from Dame Marguérite Roy. It might, indeed, be the case that this judgment was thus originally acquired by Regnier honestly, and in order to protect himself and his wife against any claim upon the judgment of Brown, in respect of which, whatever may have been their liability *inter se*, they were unquestionably, jointly, and severally liable to Brown's estate. And the same motive may have justified the application for the garnishee order

of the 30th September, 1845. But if this was so, it is clear that Regnier was not in a condition in which he could use, either honestly or legally, this judgment against his wife. If he did acquire the judgment honestly, he held it for his wife's benefit as well as his own. No justification is shown for the transfer of it to the Respondent in order that he might use it against Dame Margu rite Roy or her property. No consideration is satisfactorily shown to have passed between the Appellant and Regnier on the several assignments of portions of this judgment debt. And it is abundantly demonstrated on the record that the considerations expressed in the different deeds executed in the course of the voluminous transactions embodied in it, cannot safely be treated as paid, because they are thereby admitted to have been paid.

Another important consideration is under what advice Dame Margu rite Roy, evidently not receiving that protection from her husband which she ought to have received, acted in this transaction. Her advocate and attorney, it is admitted, on both sides and by himself, was M. Ubald Beaudry, who was examined as a witness in the cause. It cannot be said that his examination (Record, p. 274), taken, no doubt, many years after the transaction, throws much light upon it, or tends to establish its regularity or fairness. On the other hand, he admits that he is now, in some sort, a partisan of the Respondent, and has aided him in his defence in this suit; that he was retained and instructed rather by Regnier than by his wife; that the proposal for the purchase came to him directly from the Respondent, and was submitted through him to Dame Margu rite Roy; and that he acted in at least one of the seizures of his client's property under Francis's Judgment, as the advocate of the seizer, a circumstance which he wholly fails to explain. Mr. Justice Monk, too, finds that he also drew the counter-letter (p. 646). His bill of costs (p. 158), of which the greater part was paid under the deed of the Respondent, is entirely made out against Regnier; and everything points to the conclusion that he was substantially instructed by, and acting for, Regnier in this business. Mr. Justice Monk suggests that Dame Margu rite Roy had

also the independent advice of her son-in-law Lorimier; and lays stress upon his statement that two proposed drafts of the deed of sale were shown by him to Messrs. Pelletier and Bourret (Record p. 269). But there is really nothing to show that those gentlemen ever gave Margu rite Roy any advice in the matter, or saw the drafts, except for the purpose suggested by Lorimier. Nor is it likely that they would have interfered between M. Beaudry (a person of position and consideration in his profession) and his ostensible client. As for Lorimier, he appears, at that time, to have been in difficulties, and hardly a free agent in the matter. His connection with the lady cannot be taken to supply the want of the independent aid and professional advice which M. Beaudry was bound, and failed, to give her.

On the whole their Lordships, without giving much weight to the oral testimony of Lorimier, which may be open to the objections taken to it in the Courts below; but relying on the conduct of Regnier and the Respondent, as proved by authentic acts; and to the unsatisfactory character of the testimony, both of the Respondent and of M. Beaudry, in explanation of those acts; are constrained to say that the transaction of October 1846, was one which, upon a suit brought in proper time, Dame Margu rite Roy might successfully have impeached, if no better evidence in support of it than that now forthcoming had been produced. They have hitherto excluded from consideration the third *r sum * of Mr. Barnard, because that is founded on matters subsequent to the execution of the deed; matters which, even if they afford some evidence of the imputed conspiracy between the Respondent and Regnier to get the property without paying for it, also afford evidence of the acts of ratification relied upon by the Respondent, and are, moreover, capable of being treated as separate transactions, to be inquired into on their own merits.

The following is the history of the subsequent dealings between the Respondent and Dame Margu rite Roy.

It may be assumed, without going into the details, that the Respondent realised, either by payment, or by recovery of the lots upon which they

were secured, all the credits comprised in Schedule (A) to the deed, and that he also paid, or otherwise indemnified, Dame Marguérite Roy against all the debts comprised in Schedule (B). The satisfaction of the annuity to Dame Josephta Roy, and the settlement of the matters which were the subject of the counter-letter of even date with the deed, were involved in the transactions now to be shortly stated.

It would appear that between 1846 and 1849, the Respondent had commuted the tenure of the purchased lands, by paying or becoming, liable to pay to the religious communities, who were the lords of it, the price of the seignorial dues, and that the preferable lien which the law gave to him for the sums thus expended, passed by various mesne assignments, nominally at least, through his brother-in-law to his wife, who is separate in estate from him. A good deal is made of this in the Factum of the Appellant, and in his case on this appeal. But the enfranchisement of the land was clearly contemplated, and provided for, by the deed. The law makes the sums paid for enfranchisement the first charge on the land, and the transfer of that charge to the Respondent's wife, if material to the present question, and impeachable at all, can only be impeached in a suit to which she is a party.

On the 17th of March, 1849, the Respondent, being then in embarrassed circumstances, brought a suit (p. 276) to be relieved from the purchase, on the ground that Dame Marguérite Roy, for default of appearing before a Judge, was not duly authorized to execute the deed of sale. Regnier and his wife are said (p. 343) to have appeared to this action. But nothing came of it. It seems to have been finally abandoned in consequence of the cure, by means of a retrospective statute, of the defect in the title, if that ever existed. It is suggested by Lorimier, in his evidence (p. 339), that this proceeding was brought by the Respondent with a fraudulent intent, and in the belief that it would enable him to get the land without paying the price, by means of his first charge on it in respect of the enfranchisement. If the land was as valuable as is now pretended it was, such a contrivance could

hardly have succeeded. But it is certain that Dame Margu rite Roy then showed no inclination to have the sale rescinded.

On the 26th of June, 1849 (p. 439), the two first payments of 250*l.* cash, on account of the 2,000*l.*, being then due under the deed, Dame Margu rite Roy gave the Respondent a prolongation of the term of four years from that date, viz., to the 26th of June, 1853. She also gave up her *hypoth que* and other rights on certain of the lots. Yet she might then, if she had desired to set aside the sale, have sued for its rescission under her rights and privileges as an unpaid vendor. There is no explanation of this transaction; and it would certainly have been incumbent on her, if she had been the plaintiff in this suit, to explain this apparent confirmation of the original transaction.

On the 11th of June, 1850, she petitioned the Judges of the Court of Circuit for authority to receive, and give receipts for the purchase-money to come to her from the Respondent. This proceeding seems to imply that she was not then acting under her husband's influence, but adversely to him, and is some further confirmation of the transaction.

Before this, however, and on the 26th of June, 1849 (p. 434), a long deed was also executed between the Lorimiers and Dame Josephta Roy on the one side, and the Respondent on the other. It is in the nature of a settlement in respect of the claims of the three former persons, under the Deed of the 30th of October, 1846, and the counter-letter of the same date, though, like most of the settlements to be found in this record, not of a final character.

On the same day Dame Margu rite Roy executed another deed, by which she assigned certain other rents to the Respondent in consideration of what had been done by him in relieving her from some of the obligations she had incurred towards the Lorimiers; and by the last clause of the deed (p. 204) she especially ratified and confirmed the sale of the 30th of October, 1846.

There were also some distinct transactions between the Respondent and Dame Margu rite Roy in respect of the claims of Louis Marteau as cessionaire of the

rights of Pantaléon Cadieux, and of some dealings with Ovide Blanc, in which fraud is imputed by the parties to the Respondent. It is difficult to unravel them. It is sufficient to say that their merits cannot be tried in such a suit as this, and that they would at most go to the question whether the stipulations of the deed had been duly carried into effect; not to that whether it should be set aside on the ground of fraud.

There are occasional appearances of Regnier upon the scene. On the 12th of July, 1850, he transferred to Pierre Moreau (apparently the brother-in-law of the Respondent) his rights under the contre-lettre of the 3rd November, 1846 (p. 170). On the 11th of November, 1850, he revoked (as far as he could) by notarial act the authority he had given to his wife to receive the purchase money of the lots sold (alleging it to belong to him); and on the 14th caused this revocation to be solemnly notified to her. And on the same 11th November he, by another deed, transferred 1,000*l.* and interest, being half the outstanding purchase money, to one Eugène Jouette, who is admitted by the Respondent (see p. 543) to have been a *prête-nom*. These acts, however, except as general evidence of dishonesty, do not affect the case.

The most material of the subsequent transactions is that which relates to the alleged satisfaction of the 2,000*l.* payable to Dame Marguérite Roy under the deed, of which it is admitted she has directly received only 30*l.*

On the 31st of March, 1853, Dame Marguérite Roy transferred all her rights against the Respondent in respect of the 2,000*l.* (subject to a reservation as to a sum of 750*l.*, which was to abide the result of some legal proceedings) to Jean Baptiste Lionais, the Respondent's brother; who afterwards transferred the benefit of this transfer to the Respondent's wife, for whom he was probably a mere *prête-nom*.

It does not appear that any consideration was received by her for this; but her son-in-law, Lorimier in his evidence (p. 270), states that this cession was made at his instance, and in order to effect a transaction of even date whereby (see p. 514) he in his own right and that of his wife, and also as

assignee with her of the rights of Josephtha Roy, transferred to the same Jean Baptiste Lionais all his rights under the deeds of the 30th of October, 1846, and the 26th of June, 1849, in consideration of a sum of 650*l.* to be paid by the Respondent's wife.

The Factum of the Appellant connects these transfers with a complicated litigation arising out of a suit of Duplessis *v.* Lionais, alleged to have been collusive, and a maze of chicanery, of which it is difficult to find a clue.

But, if it be granted that this transaction, certainly suspicious, was really fraudulent; if it be true that this unfortunate old lady was thereby tricked out of the chief part of the price for which she sold her property, how is it possible that its merits can be tried in this suit in the absence of all the parties ostensibly concerned in it? Again, how can it be made a ground for setting aside the deed, unless it can be shown that it was part of a conspiracy entered into seven years before to obtain the property without paying for it—a most unreasonable presumption. There may be good ground for setting aside the transaction itself in a suit properly framed for the purpose, and thus recovering the credit transferred; and such a suit appears to have been once threatened by the Appellant. But the transfer, if valid, or a suit to enforce the payment of the unpaid purchase money by setting it aside, would alike imply a recognition of the original sale as valid.

It need only be added that, after a great fire at Montreal in 1852, the land became very valuable for building purposes, and that large sums have been expended by the Respondent upon it; that, in August, 1854, Dame Margu rite Roy transferred all her rights and claims against the Respondent to the Appellant, Regnier (who seems to have been faithless to all parties) joining in the transfer; and that she and her husband both, as it would seem, died before the institution of this suit.

Reviewing these subsequent transactions, their Lordships are of opinion that though there is much in them which tends to throw additional suspicion on the honesty and good faith of the Respondent; so far from strengthening the right of Dame

Margu rite Roy to set aside the deed of sale by such a suit as this, they are, if unexplained, absolutely inconsistent with the continuance of that right, involving, as they do, repeated ratifications of the deed. The action was no doubt commenced within, though only just within, the legal term of prescription. But that does not in such a suit relieve a party from the consequences of his own acts or l ches. A Court of Justice will not give its aid to a person seeking to set aside his own solemn deed of sale, if it appears that he has acquiesced in it for years, lying by, until by circumstances, and the expenditure of capital, the subject matter of the sale has greatly increased in value, and new interests have been created in it. He must sue promptly, or explain the delay. Whether Dame Margu rite Roy, if alive and the plaintiff in the suit, could have made a better case it is needless to inquire. It cannot be presumed that she would have done so, and certainly no such intendment ought to be made in favour of a person in the position of the Appellant. Upon the whole, then, their Lordships, though dissenting from much of the reasoning of the Judges who concurred in the judgment under appeal, are of opinion that they were right in coming, upon the evidence before them, to the conclusion that Margu rite Roy could not when this action was brought, and in an action like this, have successfully sued to set aside the sale of 1846.

This being their Lordships' opinion, it is unnecessary for them to consider the objections raised on behalf of the Appellant to the application to him of "*l'exception des droits litigieux*." They will only say that, in the absence of all insuperable objections, they should have thought that the plea afforded the measure of the relief to which in any view of the case the Appellant could be entitled. The existence in the code of the provisions on which that plea is founded, shows that if the law of Canada permits, it does not favour such transactions as that by which the Appellant became the purchaser of Dame Margu rite Roy's claims. Nor would their Lordships have been sorry to mark the view which they take of the Respondent's conduct in these transactions by granting such relief. But they could not do so consistently with what is of

far higher importance than the merits of the parties in this particular case, viz., the substantial principles by which Courts of Justice ought to be guided in determining suits of this kind.

They must therefore humbly advise Her Majesty to affirm the Judgment under Appeal, and to dismiss the Appeal. In an ordinary case the costs would follow the result; but their Lordships, considering the peculiar circumstances of this case, and the view they have taken of them, have, not without doubt, come to the conclusion that each party should bear his own costs of this Appeal.

