
1887
 ANTOINE LEGER (DEFENDANT)..... APPELLANT;
 AND
 * May 7. PAUL FOURNIER (PLAINTIFF). RESPONDENT.
 * June 22. ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 LOWER CANADA (APPEAL SIDE).

Sale à réméré—Term—Notice—Mise en demeure—Res judicata Improvements.

Held, affirming the judgment of the Court below, where the right of redemption stipulated by the seller entitled him to take back

PRESENT. Sir W. J. Ritchie, C. J. and Strong, Fournier, Henry, Taschereau and Gwynne JJ.

(1) Leave to appeal to Her Majesty's Privy Council has been granted.

the property sold within three months from the day the purchaser should have finished a completed house in course of construction on the property sold, it was the duty of the purchaser to notify the vendor of the completion of the house, and in default of such notice, the right of redemption might be exercised after the expiration of the three months.

There was no *chose jugée* between the parties by the dismissal of a prior action on the ground that the time to exercise the right of redemption had not arrived, and the conditions stipulated had not been complied with.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) (1) affirming the judgment of the Superior Court maintaining plaintiff's action. (2).

The respondent was proprietor of real estate, No. 428 of St. Antoine Ward, in the city of Montreal, with a brick house and stone foundation in course of completion and divers materials to be used for this object. The appellant, a contractor, undertook its completion for the price of \$3,000, exacting as security a pledge of the property and materials. This pledge was executed by way of a direct sale or conveyance of the land, buildings and materials, executed by notarial deed of 24th April, 1879.

At the same time a private writing *contre-lettre* was signed by the appellant, by which he bound himself to reconvey the property to plaintiff on receipt of \$3,000, within three months from the date of the final completion of the work, in accordance with the verbal agreement made between the parties on this point.

The *contre-lettre* is as follows :—

A Monsieur Paul Fournier, Entrepreneur Menuisier, de la Cité de Montréal.

MONSIEUR :—

Je m'engage par les présentes à vous rétrocéder à raison de la somme de trois mille piastres que vous me paierez comptant lors de la confection du dit acte de rétrocession en un seul paiement en aucun temps durant l'espace de trois mois à compter du jour que j'aurai terminé les bâtisses en voie de construction le lot No. 428 quatre cent vingt-huit au plan et au livre de renvoi officiel pour le

(1) M. L. R. 3 Q. B. 124.

(1) M. L. R. 1 S. C. 360.

1887
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 LEGER  
 v.  
 FOURNIER.

quartier St. Antoine en la Cite de Montréal, laquelle bâtisse je m'engage compléter et parachever suivant les conventions verbales faites entre nous au sujet de leur confection et parachèvement, mais ce délai expiré je serai complètement libre du présent engagement.

Je demeure avec respect,  
 Votre dévoué serviteur,  
 ANTOINE LEGER.

Montréal, 24 Avril 1879.

The respondent by his action claimed that appellant had agreed to complete said house for the sum of \$3000, and that he, respondent, reserved his right to redeem said property within three months from its completion, according to the private writing given to him by appellant, that he was still within the delay to exercise his right of redemption, inasmuch as the work required to be done according to agreement was not completed, and that even if such work was completed, appellant was bound to notify respondent of its completion, and that such notice was never given.

Nevertheless, to avoid any further difficulty, respondent tendered through a notary, on the 1st June, 1883, the amount of \$3,000, together with the sum of \$246.15, declaring his readiness to pay any further amount if appellant was entitled to the same for costs of appeal in a case between the parties, if the appellant executed a deed of reconveyance of the property, which he refused to do.

The respondent moreover alleged that he was prepared and willing to pay appellant, and offered to deposit the said sums, and prayed that appellant be condemned to execute such a deed of reconveyance on payment of such sums, and that in default of his complying with such order that the judgment of the court stand in lieu of such reconveyance.

Appellant pleaded:—

1. An exception of *res judicata*, the judgment in a former suit instituted by respondent, which he alleged was to the same effect as the present action.

2. A plea, alleging that the buildings had been

completed for more than three months, to wit, since 1879, to the knowledge of respondent, and that the latter was too late and without right to claim the redemption of said property

1887  
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 LEGER
 v.
 FOURNIER.
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3. A plea of general denial.

4. A plea of claim for improvements, to wit: That appellant, without admitting respondent's rights in the premises, urged that such rights could not be exercised, without his being paid the sum of \$1,010 for the price and value of useful and material improvements which he has made in good faith after the lapse of time to redeem the property, and which had increased its value to double that amount; such improvements were specifically detailed in the plea and a separate statement filed.

The Superior Court (Hon. Mr. Justice Jetté) rejected appellant's pleas, including his claim for improvements, and granted the prayer of respondent's demand, ordering appellant to execute a deed of retrocession within fifteen days, and in default of his so doing, the judgment to be considered as respondent's deed, upon his depositing the sum of \$3,000 and the costs of his former action.

On appeal the Court of Queen's Bench for Lower Canada, appeal side, affirmed the judgment, but allowed \$40 to appellant for improvements.

The evidence as to improvements is reviewed in the reports of the case in the courts below. In the prior action the tender made by respondent was \$2,600, and in that case the court held that the tender made was insufficient, and that the time had not arrived to exercise the right of redemption.

Sir W. J. RITCHIE C.J.—No question of law that I can discover arises in this case, the controversy is one of fact pure and simple. The Superior Court and the Court of Appeal are unanimous as to the result at which they have arrived on the evidence in this case,

1887
 LEGER
 v.
 FOURNIER.
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 Ritchie C.J.
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and I can discover nothing to justify me in saying that the conclusion at which they arrived is wrong, or that the judgment of the Court of Appeal should be reversed or interfered with.

STRONG J.—I entirely adopt the opinion of the court below, and for the reasons given in that court, I am of opinion that the appeal should be dismissed.

FOURNIER and HENRY JJ. concur in dismissing the appeal with costs.

TASCHEREAU J.—I am of opinion that the judgment of the Court of Appeal should be varied by ordering \$302 for the three last items of his bill of claim, to be paid to appellant by respondent instead of \$40. No costs in this court nor in court of appeal.

GWYNNE J. concurred with Taschereau J.

Appeal dismissed with costs.

Solicitor for appellants : *F. C. de Lorimier.*

Solicitors for respondent : *Laflamme, Laflamme & Richard.*
