Supreme Court of Canada
City of Quebec v. Lampson, (1918) 56 S.C.R. 288
Date: 1918-03-05

The City Of Quebec (Defendant) Appellant:

and

Frederick Lampson (Plaintiff) Respondent.

1917: October 29, 30; 1918: March 5.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Emphyteusis—Lease—Sale — Intention of parties — Art. 567 et seq. C.C.—Appeal—Jurisdiction—Supreme Court Act, section 46 (b).

By an agreement respecting the unexpired term of an emphyteutic lease, it was stipulated that the vendor should be obliged to give to the buyer a deed of sale of all his rights and claims upon the lease when a sum of two hundred dollars had been wholly paid, and thereupon the buyer should enter into full proprietorship of the immoveable (under the terms of Art. 569 C.C.) subject to the payment of the emphyteutic rent.

Held, Anglin J. dissenting, that the intention of the parties was that the sale was to be deemed perfected by the payment of the sum stipulated, without it being necessary for the buyer to take out a title deed.

Per Anglin J.—When the payment was made, the buyer would become entitled to a transfer of the vendor's title and would enter into full proprietorship only after such transfer should have been made.

Held, Duff J. dissenting, that the existence or non-existence of proprietorship of a lot of land held under an emphyteutic lease "relates * * * to * * * title to lands or tenements" within the clause *(b)* of section 46 of the Supreme Court Act.

APPEAL from the judgment of the Court of King's Bench, appeal side, maintaining the judgment of the Superior Court, District of Quebec[1], and maintaining the action with costs.

The immoveable property in question in this case was leased by the respondent to one Giguère for a

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period of twenty-five years; and subsequently, the unexpired portion of this lease, to wit two years, was sold for taxes due by the tenant and purchased by the appellant. The appellant then leased that unexpired portion to one Mrs. Falardeau; and the agreement between them contains this provision:

[1] Q.R. 49 S.C. 307.

Il est convenu entre les parties, que la dite Cité de Québec sera tenue et obligée de consentir à la dite Dame Falardeau un titre de vente de ses droits et prétentions sur les dits baux emphytéotiques lorsque la dite somme de deux cents piastres aura été entièrement payée, et alors la dite Dame Falardeau entrera en pleine propriété du susdit immeuble, sujet toutefois au paiement de la dite rente emphytéotique.

Mrs. Falardeau entered into possession of the property immediately after the lease was made, and she fulfilled all her obligations to the appellant, her vendor and to the respondent, the landlord; but she did not apply for nor obtain a deed of sale.

The appeal turns upon the meaning of the above clause, interpreted in accordance with the above facts and the intentions of the parties and the question to be decided is whether Mrs. Falardeau or the appellant has the proprietorship of the immoveable leased.

L. A. Taschereau K.C. and J. E. Chapleau K.C. for the appellant.

Chs. Angers K.C. and Louis Larue for the respondent.

THE CHIEF JUSTICE.—I am of the opinion, with all possible respect, that we have jurisdiction to hear this appeal under section 46 (*b*) of the "Supreme Court Act." By this action, the plaintiff (respondent here) claims: *(a)* the possession as landlord of a lot of land held as

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he alleges, by the city, under an emphyteutic lease; and *(b)* the payment of different sums of money for arrears of rent, for damages and for repairs. The question at issue between the parties relates therefore to the right or title to property held under emphyteutic lease. Emphyteusis carries with it alienation; and, so long as it lasts, the lessee enjoys the rights attached to the quality of a proprietor. Art. 569 C. C.

> Le droit de l'emphytéote est réel et puisqu'il s'exerce dans un immeuble, c'est un droit réel immobilier.

Laurent, vol. 8, No. 352. *Delisle* v. *Areand*[2]. This point was not raised at the argument

On the merits, I have reached the conclusion that the city is not now, and has not been for many years, to the knowledge of Lampson, in possession of the property in question, and that whatever rights the city acquired under the sheriff's title, hereinafter referred to, were assigned to Falardeau. The facts are not in dispute. The whole controversy turns upon the obligation of the city to pay rent for the property during the occupancy of Falardeau and that obligation depends upon the effect to be given the deed made by the city to Falardeau. Was it a mere lease, as Lampson contends, or did it operate to transfer the title to the realty for the unexpired term of the lease?

[2] 36 Can. S.C.R. 23.

I do not think that either of the parties to these proceedings ever intended to argue that emphyteutic rent can be collected from a tenant who has, by valid assignment, parted with his rights in the property held under the emphyteutic lease. The confusion has, I think, arisen out of the claim which appears to have been made that novation was effected by the substitution of Falardeau as the debtor of the rent in place of the city with the consent of Lampson. That is

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the question which the Chief Justice who tried the case deals with, and I agree with that distinguished judge, who held that a case of novation was not made out. I have, however, the misfortune to be unable to agree to the construction which the Chief Justice puts on the deed by the city to Falardeau. It is, I grant, difficult to imagine how such a simple agreement as the parties evidently had in contemplation could have been so clumsily expressed. But, in construing a deed what must be sought is the intention of the parties; and however ambiguous and involved the language they used may be, if that intention can be ascertained with reasonable certainty, then effect must be given to it. Mr. Justice Archibald, in the case of *Stevenson* v. *Rollit*[3], gives the rule of construction applicable to deeds which contain a promise of sale of an immoveable when followed by actual possession. As that learned judge says, the answer to the question as to whether the right of property has or has not passed must be gathered from the promise of sale as to the intention of the parties. If there is

> a clause in the promise of sale *which provides that the right of property should not pass,* the courts have never held that, notwithstanding such provision, the right of property did pass.

But, in the absence of such a provision, effect must be given to article 1478 C.C.

> Les parties ont stipulé expressément qu'elles entendaient faire un contrat de location, mais le rapport de droit, tel qu'il résulte objectivement des clauses de l'acte, correspond au contrat de vente dont l'élément spécifique, transfert de propriété, se trouve réalisé. S.V. 1888, 1. 87; D. 96, 1. 57; D. 98, 1. 271.

This appeal, as I understand the contentions of the parties, turns upon the question as to whether it was the intention of the city not to part with the property held under emphyteutic lease until the "titre de vente," *i.e.,* the title deed or writing evidencing the sale was

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[3] Q.R. 42 S.C. 322 at p. 328.

taken out by Mrs. Falardeau. There is no doubt that the deed of lease contains a promise of sale and that Mrs. Falardeau entered into possession thereunder. But it is said it was a condition of the deed that the title should not pass until Mrs. Falardeau had applied for and obtained her deed of sale.

The property in question was leased by Lampson to one Giguère for a term of years under emphyteutic lease and subsequently the unexpired portion of that term was sold for taxes due by the tenant. It was purchased by the city and the agreement now in question was then entered into. By that agreement, the city leased to Mrs. Falardeau for two years the unexpired portion of the lease to Giguère, the lessee undertaking to pay to the city $200 in eight equal instalments of $25 each and to Lampson, the landlord, his emphyteutic rent. In a word, by the terms of the lease, Mrs. Falardeau assumes all the obligations of a proprietor and, in addition, agrees to pay the city for its interest the $200 above mentioned. Then the lease contains this provision:

> Il est convenu entre les parties, que *la Cité de Québec sera tenue et obligée de consentir à la dite Dame Falardeau un litre de vente* de ses droits et prétentions sur les dits baux emphytéotiques lorsque la dite somme de deux cents piastres aura été entièrement payée, et alors la dite Dame Falardeau entrera en pleine propriété du susdit immeuble, sujet toutefois au paiement de la dite rente emplrytéotique.

This appeal turns upon the meaning of that language. I construe that clause, read with all that precedes, to mean that, when the sum of $200 has been paid, Mrs. Falardeau becomes the owner of the unexpired term of Giguère's lease acquired by the city under the sheriff's title and, in addition, the city binds itself to give a deed conveying to Mrs. Falardeau all its rights and pretensions to the unexpired portion of the lease. Mrs. Falardeau entered into possession of the property

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immediately after the lease was made to her and she fulfilled all her obligations to the city, her vendor, and to Lampson, the landlord; and it is now for us to say what was in all these circumstances the intention of the parties when they made that agreement. It is reasonably clear that Mrs. Falardeau meant to acquire and the city to sell all the right of the latter in the property. The total consideration stipulated for was the sum of $200 and when that sum was paid to the city Mrs. Falardeau had fulfilled her part of the agreement. She could then, at any time, force the city to give her the paper title, which would be merely evidence of the fact that she had performed her part of the agreement. The language of the deed, as I have already said, is not happily chosen; but why should we assume that the taking

out of the paper title by Mrs. Falardeau was a condition of the sale? Nothing remained to be done by her when she had completed her payments and it is not easy to see why the city should make it a condition of the sale that Mrs. Falardeau should take out a deed. What could be the possible object of such a stipulation?

The language of the instrument is:

> Il est convenu * * * *que le cité sera tenue et obligée de consentir à un litre de vente* * * * lorsque la dite somme de deux cents piastres aura été entièrement payée.

I can find in these words no trace of any intention by the city to retain the title to the property after the $200 had been paid. When that sum was paid, Mrs. Falardeau had fulfilled all her obligations to her vendor and she was entitled absolutely and of right to her "titre de vente"—document of title. The city could not refuse to give it to her and therein this case is clearly distinguishable from such cases as *Stevenson* v.

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Rollit[4]; *Hogan* v. *City of Montreal*[5]; *Thomas* v. *Aylen*[6]; *Grange* v. *McLennan*[7], which will all be found collected at pp. 29 and 30 of Mignault, vol. 7. That learned author sums up his analysis of all these cases thus:—

> Quelle interprétation devra-t-on donner à la clause par laquelle le vendeur s'engage à donner un titre lorsque le prix sera payé? *C'est une question d'interprétation* de l'interprétation de l'intention des parties.

It is difficult for me to find in the language of the instrument an intention to give the purchaser the right to enjoy the property for years, and then permit her by refusing to exercise her discretionary right to take the paper title to defeat the whole scheme of the agreement. It is not, I insist, the vendor which stipulates, as in the cases referred to by Mignault, for the retention of the title for its own protection, but the purchaser who neglects to exercise her right to ask for and obtain the evidence of the transaction entered into with the city. Under the Code, sale is perfected by the consent alone of the parties (Arts. 1472 C.C.; 1025 C.C.). No deed is necessary and the paper title gave no additional force or effect to the transaction in so far as Mrs. Falardeau was concerned. The latter, as I have already said, entered into possession immediately after the lease was passed, made her payments within the stipulated time and thereafter dealt with the property as if it was her

[4] Q.R. 42 S.C. 322.
[5] M.L.R. 1 Q.B. 60.
[6] 16 L.C. Jur. 309.
[7] 9 Can. S.C.R. 385; 28 L.C. Jur. 69.

own, not only to the knowledge of the city but also of Lampson who treated her as his emphyteutic tenant.

It is said that there was no obligation on the part of Mrs. Falardeau to acquire the emphyteusis; but that was the consideration for the payment of $200. The emphyteusis was the thing sold or for which she

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agreed to pay and did pay the $200 and of which she entered into possession immediately when the deed was made. As for tradition, I assume that Pothier's definition will be accepted by the majority:

> La tradition réelle est celle qui se fait par une préhension corporelle de la chose faite par celui à qui on entend en faire la tradition, ou par quelqu'un de sa part. *Il n'est pas nécessaire* pour la tradition réelle qu'il en soit fait un acte par écrit.

(Art. 1493 C.C.). The obligation to deliver is satisfied when the buyer enters into possession with consent of seller. Title passes by the effect of the contract (1025 C.C.).

On the whole, I am of opinion that the appeal should be allowed with costs.

DAVIES J.—I concur with His Lordship the Chief Justice.

IDINGTON J.—I concur with His Lordship the Chief Justice.

DUFF J. (dissenting).—I am to dismiss for want of jurisdiction, with costs.

ANGLIN J. (dissenting).—The plaintiff, as emphyteutic lessor, sues the City of Quebec, as purchaser, at a judicial sale for taxes, of the unexpired term of two emphyteutic leases, for an unpaid balance of the ground rent or *canon* accrued since the purchase, for the cost of neglected repairs which the emphyteutic lessee was bound to make, and for delivery up of the leased premises, the emphyteusis having now expired. To this claim the city pleads that it sold its interest in the premises to one Mme. Falardeau, and that she has been the sole proprietress thereof under the emphyteutic leases since the first of August 1896, In his reply the plaintiff denies that Falardeau had acquired

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title as emphyteutic proprietor and alleges that his rights against the defendant remained unaffected by any agreement made by the defendant with her.

The learned trial judge[8], maintained the action, holding that the city by purchasing the leaseholds at a judicial sale became personally responsible to the lessor for payment of the rent or emphyteutic *canon* as well as for the other obligations of the original lessee; that a *lien de droit* was thereby established between it and the lessor whereby the latter became creditor and the former debtor in respect of the rent and other obligations of the leases; and that, in the absence of novation, the city was not relieved of the liability thus assumed merely by reason of the occupation or enjoyment of the leasehold premises by Mme. Falardeau *à titre d'emphytéote,* her payments of rent to Lampson and a statement made by her that she had acquired the city's rights.

The Court of King's Bench unanimously affirmed the judgment for the plaintiff, on the ground, however, that, although an alienation of the emphyteusis made by the city in good faith would have relieved it of future obligations to the emphyteutic landlord, there has not in fact been such an alienation to Falardeau.

Having regard to the nature of an emphyteusis —it conveys the immoveable for a time to the lessee (art. 567 C.C.); so long as it lasts he enjoys all the rights attached to the quality of a proprietor,—may alienate, transfer and hypothecate the immoveable so leased (art. 569-570 C.C.); his interest may be seized and sold as real property (art. 571 C.C.); he is held for all the real rights and land charges to which the property is subjected (art. 576 C.C); the rent itself is an immoveable (art. 388 C.C.):

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> En effet, le bail emphytéotique est une aliénation de la propriété utile au profit du preneur pendant tout le temps que doit durer le bail, la propriété directe demeurant reservée au bailleur;

(Merlin, Rep. vbo. Emphytéose, 1,3)— I entertain no doubt that the issue as to the existence or non-existence of this proprietorship in the defendant "relates to title to lands or tenements" within clause *(b)* of s. 46 of the Supreme Court Act and that we have jurisdiction to hear this appeal.

That the City of Quebec by its purchase of the unexpired term of the emphyteutic leases at the judicial sale thereof assumed the obligations of the emphyteutic lessee is not now questioned. It has, of course, not been suggested that its undertaking was more extensive or more onerous. Agreeing, as I do, with the view which prevailed in the Court of King's

[8] Q.R. 49 S.C. 307.

Bench, that the plaintiff is entitled to succeed on the ground that the city never effectively parted with its interest to Mme. Falardeau, it is unnecessary to pass upon the *"considérant"* as to the absence of proof of novation, on which the learned Chief Justice of the Superior Court reached the same conclusion. It should perhaps be noted, however, that the case of *Credit Foncier Franco-Canadien* v. *Young*[9], cited by him would seem not to be in point. The lease, under which, in the absence of novation, the original lessee was there condemned to pay rent accrued after he had transferred his interest, reserved much more than a nominal rent and did not contain a stipulation obliging the lessee to improve the property and was therefore held not to be an emphyteusis, but an ordinary lease. The opinion of Merlin seems to conflict with the view taken by the learned Chief Justice and to point to the conclusion that, apart from any consideration of novation,

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on alienation of an emphyteusis, unless perhaps in the exceptional case where

> le preneur par le contrat d'arrentement a promis fournir et faire valoir la rente, et a ce obligé tous ses biens,

or has otherwise expressly assumed a personal obligation to remain responsible thereafter *(Dubois* v. *Hall*[10]), his liability for future rent ceases. Merlin, Rep. (5 ed.) vol. 7, Vbo. "Déguerpissement" s. III., 1; s. IV., 1, and s. V., 1. The facts that an emphyteusis is terminated by the total loss of the estate leased, or by abandonment (art. 579 C.C) that it imports the power of alienation and that the rent itself is an immoveable seem rather to support the view that, at all events in the absence of some explicit agreement by the lessee to remain liable for the rent after and notwithstanding a transfer of it, his personal liability terminates on its complete and *bonâ fide* alienation. It is unnecessary however to dwell further upon this aspect of the case since I am of the opinion that in the present instance there has not been the complete and effective alienation or transfer of the emphyteusis by the city which the learned appellate judges think would suffice to terminate its liability to the lessor. As put by Mr. Justice Lavergne:

> Une fois substituée au preneur originaire, le Cité de Québec ne pouvait se libérer de ses obligations quant au canon emphytéotique et au maintien de la propriété en bon état, que par une aliénation de bonne foi, ou le déguerpissement aux termes des articles 579 et suivants.

There is no question of abandonment here.

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[9] 9 Q.L.R. 317.
[10] 7 L.C.R. 479.

After acquiring the emphyteusis the city sublet the premises to Falardeau for two years from the 1st of August, 1894, at a rental of $100 a year, payable quarterly, Falardeau undertaking to pay in addition the emphyteutic rent and all rates and taxes and keep the

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buildings in repair. This lease contained the following clause:

> Il est convenu entre les parties, que la dite Cité de Québec sera tenue et obligée de consentir à la dite Dame Falardeau un titre de vente de ses droits et prétensions sur les dits baux emphytéotiques lorsque la dite somme de deux cents piastres aura été entièrement payée, et alors la dite Dame Falardeau entrera en pleine propriété du susdit immeuble, sujet toutefois au paiement de la dite rente emphytéotique.

As I translate it into English, this clause reads:

> It is agreed between the parties that the said City of Quebec shall be held and obliged to give to the said Dame Falardeau a deed of sale of all its rights and claims upon the said emphyteutic leases when the said sum of $200 shall have been wholly paid, and thereupon the said Dame Falardeau shall enter into full proprietorship of the aforesaid immoveable, subject always to the payment of the said emphyteutic rent.

Although she paid the $200 as stipulated, a deed of transfer of the emphyteusis from the city has never been executed. Her lease from the city is the only title Mme. Falardeau has to the property. As Mr. Justice Lavergne says:

> L'appelante a consenti à Madame Falardeau un simple bail pour deux ans, avec promesse de lui transférer la propriété une fois la somme de $200 payée; elle ne lui a jamais consenti la vente promise.

Mr. Justice Pelletier makes the same statement. I agree with the construction placed by those learned judges on the clause which I have quoted from the city's lease to Falardeau. Mr. Justice Pelletier says:—

> L'acte que nous avons devant nous est un bail avec une clause déclarant que, au cas de l'accomplissement de deux conditions, Mme. Falardeau pourrait devenir propriétaire; ces deux conditions sont: lo, le paiement de $200 par Mime. Falardeau à la Cité de Québec; 20. la passation d'un titre. La clause du bail citée plus haut dit que c'est alors, c'est-à-dire après l'accomplissement de ces deux conditions, que Mme. Falardeau entrera en propriété de l'immeuble en question.
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> Pour que Mme. Falardeau serait devenue propriétaire, il fallait démontrer d'abord qu'elle avait payé les $200, et en second lieu que l'acte de transmission par la Cité de Québec à elle avait été passé.

As put by Mr. Justice Lavergne:

> Madame Falardeau pouvait devenir propriétaire en vertu du bail et de ces conditions après avoir payé la somme de $200; secondement,

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> par la passation d'un titre après l'exécution de ces deux premières conditions; il est dit dans le bail: "c'est alors que Madame Falardeau entrera en pleine propriété de l'immeuble." Il n'y a jamais eu de titre donné par la Cité de Québec à Madame Falardeau.

When she should have paid the $200, Mme. Falardeau would become entitled to a transfer of the city's title: when that transfer should have been made *(alors;* thereupon) she would enter into full proprietorship. That, in my opinion, is the intent and effect of the provision invoked by the city: The making of the transfer was a condition precedent to the passing of the property. *Stevenson* v. *Rollit*[11]; *Hogan* v. *City of Montreal*[12].

A promise of sale with delivery and possession has not the effect of conveying the right of property to the promisee, when it appears from the terms of the contract that such was not the intention of the parties, but that on the contrary they meant to effect this result by a subsequent act. *Renaud* v. *Arcand*[13]. The question is one of intention. *Grange* v. *McLennan*[14].

The evidence establishes that, since 1896, a dispute had been pending between the Falardeaus and the city as to a right of way or passage forming part of or adjoining the leased premises. The landlord had closed up this passage. The Falardeaus deemed it essential to the full enjoyment of the property. They claimed that it was in fact appurtenant to the leasehold and insisted on being given a title to it. The city contested this claim and refused to give a deed including the passage. The Falardeaus declined to take a deed without it. Matters were allowed to rest in

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that position. As David Falardeau put it in giving his testimony:

> Par La Cour:
>
> Q. Vous ne l'avez pas encore eu?
>
> R. Je ne l'ai pas encore eu, le titre, seulement ils ne nous ont pas dérangés dans la possession de la propriété, on a toujours été en possession de la propriété.

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[11] Q.R. 42 S.Q. 322, at pp. 329, 330.
[12] M.L.R. 1 Q.B. 60.
[13] 14 L.C. Jur. 102; 7 Mignault, p. 29.
[14] 9 Can. S.C.R. 385.

Par M. Larue, procureur du demandeur:

Q. N'est-il pas vrai que vous avez demandé vos titres à la cité de Québec à plusieurs reprises et que la cité de Québec a refusé, qu'elle n'a pas voulu en donner?

R. Non pas qu'elle refuse de nous en donner, mais seulement ils m'ont offert un titre que je ne trouvais pas acceptable.

Par M. Chapleau, procureur de la défenderesse.

Q. A cause du passage.

R. A cause du passage, je voulais faire clairer le passage et puis, ils n'ont pas * * *

Par M. Larue, procureur du demandeur:

Q. Tant que vous n'aviez pas de passage pour sortir, il était inutile pour vous d'avoir un titre.

R. Je ne pouvais pas continuer mon commerce là, ça ruinait mon commerce, ça nous a ruinés completement. Ils ont offert un titre mais il n'était pas acceptable pour nous.

The appellant urges two grounds in support of its contention that, notwithstanding that no deed had ever been delivered to Mme. Falardeau, she became the emphyteutic tenant under the Lampson leases and that it (the city) was thus relieved from the obligations incurred when it purchased at the sale for taxes. It relies on some payments on account of the emphyteutic rent made by Falardeau after August, 1896, and other alleged acts and admissions of her status as emphyteutic tenant: and it invokes article 1478 C.C.

As found by the learned trial judge, Mme. Falardeau did pay $100 on account of the rent due Lampson subsequent to August, 1896. The city had paid $60. A balance of about $690 remains unpaid. I find nothing in what Mme. Falardeau has done inconsistent with the tacit renewal of her lease from the city (art. 1609 C.C.) pending the adjustment of the question

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as to the lane or passage. While holding under that lease she would be bound to comply with its terms. They required her to pay the emphyteutic rent and to keep the premises in repair, etc. Her conduct and that of her husband is explicable on the assumption that, while Mme. Falardeau actually continued to hold under the lease from the city, they fully expected that she would eventually become proprietor of the emphyteusis. It does not

import an election to forego their objection to the title offered by the city. As put by the learned Chief Justice of the Superior Court:

> Tous ces faits cependant ne sauraient constituer, en faveur de la cité, une fin de non-recevoir.

On the other hand, their persistent refusal to accept a transfer unless it included the passage is inconsistent with the Falardeaus having intended that the emphyteusis should actually vest in Mme. Falardeau without the formality of a deed. Taking all the circumstances into account they do not justify a finding that she waived the giving of the deed by the city and that all parties tacitly consented to treat the promise of sale contained in the lease as having been carried out.

There appear to be two formidable obstacles to the application to this case of art. 1478 C.C. In the first place, the promise itself is unilateral. The document contains no agreement by Mme. Falardeau to purchase. The city was, no doubt, bound to sell and convey to her on payment of the sum of $200, but there was no corresponding obligation on her part to take or acquire the emphyteusis. Neither was there any delivery or any taking of possession under the promise of sale such as might import an agreement on Mme. Falardeau's part to become the owner of the property.

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In delivering the judgment of the majority of the Court of King's Bench in *Thomas* v. *Aylen*[15], Badgley, J., says:—

> It is also urged that by art. 1478 C.C. *la promesse de vente avec tradition et possession actuelle équivaut à vente;* * * * Now the article at the utmost is only a general expletive of *promesse* with both tradition and possession combined, but as a rule of law allowing it that effect, it could not annul the covenants and conditional stipulations of the parties themselves, which are exceptions to the maxim and qualify the rule, leaving the conditional sale such as it is stipulated, according to the covenants of the parties, in conformity with the stringency of another legal rule paramount to that of the article, that *modus et conventio vincunt legem* * * * It must be observed that the expressions *tradition et possession actuelle,* constituents required to make up the equivalent of sale of the article, are not the legal synonyms of each other. Tradition is the known legal complement and satisfaction of a sale, "*la tradition est la transmission du droit de propriété, c'est transférer sa possession dans l'intention de nous en faire avoir la propriété,"* and it is also expressed in different terms in the 1492 art: *'C'est la translation de la chose vendue en la jouissance et possession de l'acheteur,"* whilst, on the other hand, possession even though

[15] 16 L.C. Jur. 309, at pp. 315-6.

actuelle, is the mere occupancy of the *immeuble vendu,* the simply permitted use of the land.

The only "tradition" or delivery of the premises by the city was made under its lease to Mme. Falardeau as its tenant. It had no relation to the conditional promise of sale. Her continued possession after the term of two years had elapsed may well be attributed to a tacit renewal of it pending the settlement of the dispute as to a question of title. This dispute still remains unsettled at the expiry of the emphyteusis in 1913. If, therefore, article 1478 has any application to a promise of sale unilateral and subject to a condition to give title upon payment of the price *(Keegan* v. *Raymond et al.*[16]; *Levy* v. *Connolly*[17]; *Richer* v. *Rochon*[18]), such as that with which we are now dealing there never was the delivery or "tradition" *under it* requisite to enable the city to invoke that article. I

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also incline to think that the possession of Mme. Falardeau, because consistent with a tacit renewal of the lease from the city and therefore not necessarily ascribable to the promise of sale, was not of the character required by the article. But possession without "tradition" would not suffice.

I would, for these reasons, affirm the judgment of the Court of King's Bench and dismiss this appeal with costs.

Appeal allowed with costs.

Solicitors for the appellant: Chapleau & Morin.

Solicitor for the respondent: J. L. Larue.

[16] Q.R. 40 S.C. 371.
[17] 7 Q.L.R. 224.
[18] Q.R. 10 S.C. 64.