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ANDREW STUART JOHNSON (DEFENDANT) ..... APPELLANT;

*Nov. 9.
*Dec. 30.

AND

FRANCOIS-XAVIER LAFLAMME (PLAINTIFF) ..... RESPONDENT.

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

Sale of land—Vente à réméré—Redemption—Term—Judicial proceedings —Art. 1550 C.C.

Article 1550 of the Civil Code does not oblige the vendor, in a *vente à réméré*, to take judicial proceedings for redemption within the time stipulated in the deed. It is sufficient that, within such time, he signifies to the vendee his intention to redeem. Duff and Anglin JJ. dissented.

Judgment appealed from (Q.R. 25 K.B. 464), affirmed.

APPEAL from a decision of the Court of King's Bench, Appeal Side, for the Province of Quebec(1), affirming the judgment at the trial in favour of the plaintiff.

By the respondent's action it was contended that the right to redeem the farm became extinguished on the 20th October, 1914, owing to failure to bring suit to enforce the right of redemption within the term stipulated in the deed of sale.

The Superior Court held that the notification, within the stipulated term, by the respondent of his intention to redeem, prevented his right of redemption from lapsing, even after the expiration of the time. This judgment was affirmed by the Court of King's Bench.

On the 20th October, 1904, one Onésime Laflamme sold to the appellant a farm with the buildings thereon,

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

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for $600.00 cash, the seller reserving his right to redeem it within ten years, viz.: until the 20th October, 1914, upon repayment of the above sum to the purchaser. The reserve clause reads thus:—

"The said vendor doth hereby reserve in his favour the right to redeem the property above described and sold, any time within ten years from this day, by reimbursing to the said purchaser the said sum of six hundred dollars, together with interest at five per centum per annum, payable yearly up to the full reimbursement of the said sum of six hundred dollars."

The respondent alleged that on 7th November, 1907, Onésime Laflamme conveyed to him his right of redemption of the said farm about which nothing was done until the 19th October, 1914, when the respondent caused to be served on the appellant a protest mentioning the original deed by Onésime Laflamme to him and adding that he had acquired from Onésime Laflamme his right to redeem the farm and calling upon the appellant to accept and receive the sum of $630.00 "en bonne espèce et valeur ayant cours en cette province," under pain of all damages and costs.

The appellant having failed to comply with this request, the respondent, on the 8th January, 1915, brought action against him for the enforcement of the right.

Mignault K.C. and *P. H. Coté K.C.* for the appellant. Effect must be given to the provisions of art. 1550 C.C. according to the plain meaning of the language used without regard to the prior state of the law or opinions of commentators, *Vagliano* v. *Bank of England*(1), at pages 144-5; *Herse* v. *Dufaux*(2); *Abbott* v. *Fraser*(3).

(1) [1891] A.C. 107. (2) 9 Moo. P.C. (N.S.). 281.
(3) L.R. 6 P.C. 96.

The action should be returned into court before expiration of the delay and accompanied by *offres réelles*. *Walker* v. *Sheppard*(1). See also *Trudel* v. *Bouchard*(2).

Girouard K.C. and *Méthot K.C.* for the respondent referred to Pothier, Vente, vol. 3, No. 436, Laurent, vol. 24, No. 397, and Mignault, Droit Civil Canadien, vol. 7, page 163.

THE CHIEF JUSTICE.—This is an action brought by the plaintiff, respondent, as assignee of the rights of his brother, Olivier Laflamme, to enforce an agreement entered into between the latter and the defendant, appellant, on the 20th October, 1904.

By that agreement Olivier Laflamme sold to the appellant a lot of land for the price of $600 subject to a stipulation that the vendor reserved to himself the right to take back the property upon restoring the price of it with interest. The stipulation is expressed in these words:—

> The said vendor doth hereby reserve in his favour the right to redeem the property above described and sold, any time within ten years from this day, by reimbursing to the said purchaser the said sum of six hundred dollars, together with interest at five per centum per annum, payable yearly up to the full reimbursement of the said sum of six hundred dollars.

On the 30th November, 1907, the plaintiff bought for the sum of $800 his brother's right to redeem the land, and he has ever since been in possession, paying taxes, interest, insurance and fulfilling all the other obligations of an owner.

On the 18th October, 1914, the plaintiff deposited the amount due under the deed of sale ($600), with interest, in the bank to the credit of the defendant

(1) 19 L.C. Jur. 103. (2) 27 L.C. Jur. 218.

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and notified him that the money was there at his disposal. On the next day, 19th October, 1914, within the stipulated term a regular tender of the purchase price was made in notarial form. The defendant did not categorically refuse to accept the redemption money but suggested that the offer required further consideration; the words used were, according to the notarial deed: "*Je refuse présentement.*" It would appear as if the intention was to throw the plaintiff off his guard. Not having heard further from the defendant, this suit was brought in January, 1915.

The plea to the action is in substance (*a*) that Ol. Laflamme failed to fulfil the conditions subject to which the right of redemption might be exercised; (*b*) that the tender was irregular and the plaintiff did not represent Ol. Laflamme; (*c*) that the tender did not include the amounts paid by the defendant for insurance, taxes, etc.

Issue was joined on these pleadings. No evidence was given of any failure to comply with the conditions of the deed; the plaintiff himself was the only witness examined; and the case was disposed of by the trial judge in the plaintiff's favour on the written documents.

This would seem to be a very simple case on the pleadings and exhibits and the trial judge decided it on the assumption that the contract, the subject-matter of the action, was an ordinary enforceable agreement. The obligation of the defendant purchaser under that contract was to perform his promise according to its term which was to retrocede the property to his vendor upon payment by the latter of the purchase price within ten years from the date of the sale. Within that period the plaintiff, cessionnaire of the vendor's

rights, offered, in compliance with this undertaking, to pay the purchase price, which the defendant refused to accept. There is no doubt as to those facts. The plaintiff therefore did all that he was bound to do when he tendered payment of the amount due within the stipulated term. But it is said the right of the plaintiff to repurchase must be determined not by the letter of his agreement but by the provisions of article 1550 C.C. which means that the obligation of the vendor is not that set out in the words of his agreement, to reimburse the purchaser the sum of six hundred dollars any time within ten years from the date of the sale, but to bring a suit for the enforcement of his right of redemption within that period. As was said in a very recent case in the Court of Appeal at Renne, France,

> Cette règle (c'est-à-dire la règle de l'article 1662 C.N.-1550 C.C.) n'est pas d'ordre public et s'il est stipulé que dans le délai il faudra payer le prix réel et les accessoires, cette clause doit être observée,

Gaz. Trib. 1914, 1er sem. 2, 254. The clear obligation of the vendor was to reimburse the purchase price with interest at any time within ten years from the date of the sale. Is such a stipulation contrary to public policy, and if not, on what principle can it be said that the obligation created is not that clearly expressed in the agreement, but an entirely different and far more onerous one? When the defendant refused to accept the purchase price as tendered he was guilty of a breach of his obligation. And the plaintiff's right to a retrocession of the property only arose thereafter. It was the plaintiff's right under the agreement to redeem *at any time within ten years*. He had therefore until the last minute of the stipulated term to fulfil his obligation under his agreement which had the force of law over those who were parties to it; *modus*

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et conventio vincunt legem. *Frank* v. *Frank*(1); *Barrett* v. *Duke of Bedford*(2); Brown Legal Maxims 522. Toullier states the rule in these terms:—

> Pour se prononcer sur de telles questions, le juge devra consulter d'abord les termes du contrat et suivre la loi que se sont faite les parties.

De la vente, vol. 2, No. 722.

I can see no reason why we should be concerned with the very learned discussion which we had as to the meaning of article 1550 C.C. But to avoid possibility of doubt that the views of the majority here are entirely in accord with what the Chief Justice below clearly establishes to be the settled jurisprudence of the Province of Quebec, I will deal with the difficulty which is said to arise out of the fact that the action to enforce the plaintiff's right under the agreement was not brought within the ten years. Article 1550 C.C. is relied upon to support the contention that as a result he has lost his rights under the deed of sale and the defendant remains absolute owner of the property.

That article in the French text reads as follows:—

> 1550. Faute par le vendeur d'avoir exercé son action de réméré dans le temps prescrit, l'acheteur demeure propriétaire irrévocable de la chose vendue (C.N. 1662).

It reproduces *ipsissimis verbis* article 1662 of the Code Napoléon. At the time this article 1662 C.N. was incorporated in the Quebec Code to amend the then existing law, the words "son action," *i.e.*, "action de réméré" had been by the French courts and the most eminent text-writers construed to mean that the vendor may use the right of redemption, and do not imply that an action for redemption is necessary (Laurent, vol. 24, para. 397). This was decided by

(1) 1 Chan. Cas. 84.

(2) 8 T.R. 602, 605.

the Cour de Cassation as far back as 25th April, 1812. All the cases and references to the text-writers will be found collected in Fuzier-Herman, Code Civil Annoté, under article 1662 C.N. and Revue Trimestrielle de Droit Civil, 1915, at page 181.

Planiol with his usual lucidity explains the effect of 1662 C.N. in two paragraphs which are worth quoting (vol. 2, 1583):—

La déchéance qui frappe le vendeur à l'expiration du délai donne un très grand intérêt à la question de savoir ce que le vendeur doit faire dans le délai qui lui est accordé pour être considéré comme ayant exercé son droit. Des difficultés nombreuses s'élèvent sur cette question, parce que le plus souvent le vendeur attend au dernier moment, et l'acheteur prétend qu'il s'y est pris trop tard. Que faut-il qu'il fasse pour éviter la déchéance?

L'article 1662 ne précise rien: "Faute par le vendeur d'avoir exercé son action de réméré. * * *" Ce *n'est pas d'une action* qu'il s'agit: le vendeur est tenu de faire un *remboursement.* Dans la doctrine on admet en général que le paiement, ou tout au moins des *offres réelles,* sont nécessaires pour qu'il soit bien établi que le vendeur était en mesure d'opérer le rachat, et que l'acheteur seul l'en a empêche. Mais la jurisprudence se montre beaucoup plus facile pour les vendeurs à réméré. Elle se contente d'une simple manifestation de volonté de leur part; le vendeur signifie à l'acheteur par acte extra-judiciaire sa volonté d'user de son droit de rachat. Cela suffit, dit la Cour de Cassation, parce qu'aucune disposition de la loi ne prescrit au vendeur de faire dans le délai fixé soit un paiement soit des offres.

In their Report to the Legislature the Codifiers of the Quebec Code give in article 64 the *time* and *mode* of exercising the right of redemption according to the existing law and then say:—

L'article 64 énonce le temps et la manière d'exercer cette faculté de réméré suivant la loi actuelle. Les commissaires croient que le changement fait par le Code Napoléon dans les règles sur ce sujet les simplifie considérablement et les rend plus convenables dans leur application et leur effet. *Ils ont en conséquence adopté quatre articles du Code qu'ils soumettent comme amendement à la loi actuelle. Ils sont marqués 64a, 64b, 64c, 64d.* Ils limitent l'exercice du droit à dix ans et *astreignent strictement les parties à leurs conventions sans permettre aux tribunaux de les étendre, et sans exiger l'intervention d'un jugement pour déclarer le droit éteint.*

It is impossible to more clearly express the intention

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to adopt the rule of the French Code with respect to the *mode* and *time* of exercising the right of redemption. Article 64*c* is now article 1550 C.C. It is of some importance to note that among the French Commentators referred to by the Codifiers are Dalloz, Vente, ch. 1, section 4; Troplong, Vente, No. 716; 5 Boileux, art. 1662; 16 Duranton, No. 401; all of whom agree in saying that it is not necessary to bring an action within the delay. The reference to Boileux is specially interesting because he discusses the very question we are now called upon to decide. Boileux says:—

> Mais au moyen de quels actes le rémérés doit-il avoir lieu? Une action en justice est-elle nécessaire? Il suffit au vendeur de manifester par acte extra-judiciaire, dans le délai prescrit, l'intention d'user du pacte de rachat avec soumission de rembourser tout ce qui peut être légalement dû. La loi voit avec faveur l'exercice du réméré. Ainsi les mots: *faute d'avoir exercé son action en réméré* sont synonimes de deux ci: *faute d'avoir usé du pacte de réméré.*

With that quotation before them (*vide* Bibliothèque du Code Civil, vol. 12, page 383), the Codifiers adopt the language of the French Code. The fair inference, therefore, is that if the expression "son action" was ambiguous when first used in the Code Napoléon, that ambiguity was removed and the term had acquired a fixed definite meaning in the French law when it was incorporated in the Quebec Code in 1866. Since the promulgation of that Code, as pointed out by the Chief Justice of the Court of Appeal, the courts of Quebec have invariably construed article 1550 in the same way as article 1662 C.N. had been and still is construed. *Walker* v. *Sheppard*(1), is referred to as an exception, but here are the words of the "considérant" in that case:—

> D'ailleurs la présente action a été intentée trop tard, vu qu'elle a été rapportée postérieurement à l'expiration du délai fixé pour l'exercice du réméré et *sans offres réelles au défendeur du prix et loyaux coûts.*

(1) 19 L.C. Jur. 103.

Throughout the case seems to turn on the failure to reimburse the price.

If the courts below had not followed the "doctrine" and "jurisprudence" to which the Codifiers refer they would have set at defiance, in prinicple at least, the salutary advice given by the Privy Council to the Australian Court in *Trimble* v. *Hill*(1). See also *Casgrain* v. *Atlantic and North-West Railway Co.*(2), at p. 300; Taschereau J. in *Canadian Pacific Railway Co.* v. *Robinson*(3), at page 316.

If the question was at large one would feel bound by the decisions in the French courts because, as Laurent says:

> "Il est de principe qu'il faut interpréter le code par la tradition à laquelle il se rattache quand il la consacre."

(Laurent, vol. 2, 608). *Vide* also *Kieffer* v. *Le Séminaire de Québec*(4), at page 96. Dealing with the question at issue in that case, their Lordships say:—

> The answer to this question must depend on the requirements of the French law, upon which the Quebec Code is founded.

Girouard J. citing a number of recent French authorities says in *Connolly* v. *Consumers Cordage Co.*(5), at page 310:—

> I feel that I cannot disregard the opinions of those great jurists who are generally considered in Quebec as the best exponents of our Code. Nor can I ignore the numerous decisions of the Cour de Cassation and other French tribunals.

Vide also *Renaud* v. *Lamothe*(6), at page 366; *Parent* v. *Daigle*(7), at page 175.

It was argued by Mr. Mignault to explain the course of decisions in France and the opinions of the

(1) 5 App. Cas. 342.
(2) [1895] A.C. 282.
(3) 19 Can. S.C.R. 292.
(4) [1903] A.C. 85.
(5) 31 Can. S.C.R. 244.
(6) 32 Can. S.C.R. 357.
(7) 4 Q.L.R. 154.

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commentators that in article 1662 C.N. the word "action" is used interchangeably with the word "faculté" or "droit," whereas in the Quebec Code the word "faculté" is used in contradistinction to the word "action." I have carefully examined the articles of the Quebec Code and compared them with the corresponding articles of the Code Napoléon but without being able to reach any such conclusion. On the contrary, I find, as the Codifiers say in their report, that the articles to which Mr. Mignault refers are taken from the French Code with slight verbal changes, but the words "action" and "faculté" are used in the same connection in both Codes. In article 1650 C.C. it is said:—

> Faute par le vendeur d'avoir *exercé son action de réméré* * * *.

and then in article 1552 the words used are:—

> Le vendeur peut exercer *cette faculté de réméré* * * *,

referring clearly to the "action de réméré" in article 1550. Again article 1553 C.C. says:—

> L'acheteur d'une chose sujette à la *faculté de réméré* * * *

Article 1555:—

> L'acheteur d'un héritage sujet *au droit de réméré* * * *,

and in article 1556 "*faculté de réméré*" is used in the same sense as "droit de réméré" in article 1557. The conclusion that the words "droit" and "faculté" are used interchangeably in the whole group of articles concerned seems irresistible.

The real difficulty in this case as it was argued here arises out of the English translation of article 1550 C.C. I use the term English translation advisedly. It is said that the word "*action*" in the French text is ambiguous and that the language of the English version which removed the ambiguity should be

adopted. I understand this to mean necessarily that the English version of article 1550 is not to be treated as a mistranslation, which it is, of the French text, but as an aid to interpret that text. For a correct translation of art. 1662 C.N. *vide* French Code Annotated by Blackwood Wright. *Vide* also: Civil Code of Louisiana, art. 2548.

It may be that for those who choose to consider article 1550 C.C. in the French text without reference either to the "doctrine" or "jurisprudence" which prevailed in France when that article was adopted from the Code Napoléon some ambiguity arises out of the use of the word "*action,*" but the Codifiers had that so called ambiguity present to their minds, as appears by the quotation from Boileux, and the simple way to remove the ambiguity, if it existed, was to alter the language of the French text and not to adopt the extraordinary method of removing the ambiguity in the French text by making the English version serve as a key to the true sense of that text. That the Codifiers had no such intention is made clear by their report. When speaking of articles 65-73 of the report, which are articles 1552-1560 of the Civil Code, after saying they adopt 64*a*, 64*b*, 64*c*, 64*d*, from the Code Napoléon, they add:—

> Quelques changements de mots ont été faits dans les *autres articles* (65-73) pour rendre l'exposition des règles plus complète et éviter les ambiguités signalées par les commentateurs.

Why, if there was an ambiguity in their minds as to the meaning of article 64*c* did they not adopt the same method and make the necessary verbal changes? Speaking with proper deference I would venture to add that it is not by any means so clear, as Mr. Justice Cross finds, that under the provisions of the English version the suit must be brought within the stipulated

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term. Grammatically the words "within the stipulated term" may perfectly be read as qualifying the words "his right to redemption" which immediately precede them; there is no stop between them such as we should expect to find if "within the stipulated term" had reference to the bringing of the suit; indeed if this was the meaning, the proper reading would be:—

If the seller fail within the stipulated term to bring a suit for the enforcement of his right of redemption.

Moreover, the theory that is now suggested, while it has the charm of novelty, ignores completely the rule laid down by the Code itself in articles 2615 and 12 C.C. for the solution of the very difficulty that has arisen here. Article 2615 provides that if there be a difference between the English and the French texts that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded and *if there be any such difference in an article changing the existing laws*, as in this case, that version shall prevail which is more consistent with the intention of the article. Which version is more consistent with the intention of the article if we take into consideration the language of the Codifiers who say that their intention was to adopt the article of the Code Napoléon, referring at the same time to the Commentators who interpret and fix the meaning of the language used: *Freedman* v. *Caldwell*(1); *Naud* v. *Marcotte*(2); *Meloche* v. *Simpson*(3), at page 385 *et seq.*; *Gosselin* v. *The King*(4), at p. 268; *Wardle* v. *Bethune*(5), at page 52; *Symes* v. *Cuvillier*(6), at page 158?

(1) Q.R. 3 Q.B. 200.
(2) Q.R. 9 Q.B. 123.
(3) 29 Can. S.C.R. 375.
(4) 33 Can. S.C.R. 255.
(5) L.R. 4 P.C. 33.
(6) 5 App. Cas. 138.

In *Exchange Bank* v. *The Queen*(1), at page 167, their Lordships say, speaking of article 1994 C.C.:—

> If there be any difference between the French and English versions, their Lordships think that in a matter which is evidently one of French law, the French version using a French technical term should be the leading one.

See also *Harrington* v. *Corse*(2), at pages 108-9.

This case affords an apt illustration of the injustice that naturally follows from the strained interpretation which the appellant seeks to put on article 1550 C.C. The parties live at a considerable distance from the chef-lieu of the judicial district. To bring an action within the ten years the offer to reimburse must be made a sufficient time before the expiration of the redemption period, in this case at least four days, to allow the vendor in case of refusal to proceed to the court, consult a lawyer, take out a writ and have it served. Why should the vendor lose the benefit of this period when his contract gave him the full ten years within which to exercise his right to redeem?

On the other points raised I agree with the majority below.

The appeal should be dismissed with costs.

IDINGTON J.—I agree that this appeal should be dismissed with costs.

DUFF J. (dissenting).—The fate of this appeal depends, in my view of it, upon the decision of a single point which is a dry point of law and can be stated and discussed without reference to the facts of the particular case before us. The question relates to the construction and effect of article 1550 C.C. which is expressed in the following words:—

(1) 11 App. Cas. 157. (2) 26 L.C. Jur. 79.

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1550. Faute par le vendeur d'avoir exercé son action de réméré dans le terme prescrit, l'acheteur demeure propriétaire irrevocable de la chose vendue.

1550. If the seller fail to bring a suit for the enforcement of his right of redemption within the stipulated term, the buyer remains absolute owner of the thing sold.

And the point to be determined is this—does this article require as a condition of the effective exercise of the vendor's "right of redemption" the commencement of appropriate judicial proceedings for the vindication of that right within the "redemption" term stipulated by the contract of sale?

Reading the two versions together without reference to any context, the construction and effect of them seem not to be open to controversy, although the words in the French version

d'avoir exercé son action de réméré,

are not so precise as to be altogether incapable of more than one necessarily exclusive meaning. This cannot be affirmed of the words of the English version

If the seller *fail to bring a suit for the enforcement* of his right of redemption, etc.,

words both apt and precise and their one necessary meaning being that which they convey on the first view, namely, that the taking of legal proceedings by the seller in a court of justice to vindicate his *droit de réméré* within the stipulated time is a condition of the enforcement of that right in the sense that default in doing so makes the title of the purchaser absolute. This, moreover, though not the only possible reading is the primary and natural reading of the French version; and the slight ambiguity presented by the terms of that version, being removed by the precise and apt words in which the condition is defined by the English version all possibly imputable lack of exacti-

tude in the words — considered in themselves apart from the context and history of the article—disappears.

Is there in the cognate articles, the articles dealing with the same subject—*vente à réméré*—anything which supplies a qualifying context? The answer must be in the negative. Arts. 1545 to 1560 inclusive, speak of *la faculté de réméré, le droit de réméré,* and the "right of redemption" but there are no words in any of these articles which could properly be read as controlling the effect of the words of art. 1550.

Is there anything in this construction of art. 1550 so repugnant to the nature of the *droit de réméré* or to the provisions of the cognate articles which requires us to search for some construction more in consonance with general legal principle or with these correlative provisions of the code? According to the construction indicated, the article may, no doubt, have this effect —the *droit de réméré* must be exercised in such fashion as to enable the vendor to bring his suit within the agreed term; and the consequence (it may be) follows that the vendor must, in order to enable him to do this effectively, at least, manifest his intention to exercise his right at a date earlier by an appreciable time than that at which he would otherwise have been required to do so; in other words, it may be that the effect of art. 1550, read according to the natural construction of the language employed, is necessarily to curtail in some degree the stipulated term and possibly, in rare cases, to curtail it substantially. I do not say that under that construction this is in truth the effect of the article. The just view may be that by force of these articles themselves appropriate legal proceedings can validly be taken simultaneously with the tender, offer or expression of consent necessary to constitute an effective exercise of the *faculté de réméré.*

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Assuming, however, the former to be the consequence of the construction indicated; that, it seems to me, presents no sound reason for refusing to leave to its proper operation the unequivocal language of art. 1550.

Is there anything in the judicial history of that article in the Province of Quebec to create doubts as to its proper construction? Here again the answer must be in the negative. Our attention has been called to three decisions in which the point has been touched upon: *Walker* v. *Shepherd*(1); *Trudel* v. *Bouchard*(2); *Dorion* v. *St. Germain*(3). In the first of these an opinion was expressed favourable to the view now advanced by the appellant. In *Trudel* v. *Bouchard*(2), nothing is said explicitly by Mr. Justice Jetté upon the point before us, but from the circumstances of the case and the nature of the judgment the proper inference appears to be that his opinion would not have been unfavourable to the contention of the present appellant. The last of the above mentioned cases does not, so far as one can see, deal with or involve the point although there is a reference to it in the reporter's head-note. There are some observations in the argument of the distinguished counsel who appeared for the appellant unsuccessfully to which one of course cannot attribute the weight attaching to judicial dicta.

There being neither ambiguity in the article itself when read as a whole, nor qualifying context nor anything in the judicial application of the article in the Province of Quebec to create a difficulty, the court of appeal has found itself constrained to reject or disregard the English version and to give to the French version which is a literal transcription of art. 1662

(1) 19 L.C. Jur. 103. (2) 27 L.C. Jur. 218.

(3) 15 L.C. Jur. 316.

C.N. the construction and effect which the last mentioned article has unanimously received in France in both *la doctrine* and *la jurisprudence*.

I will state the twofold reason which compels me to hold this course to be inadmissible. First: In France they have proceeded upon the ground that the expression

exerçer l'action en *réméré*

is capable of more than one meaning.

L'expression exerçer l'action en réméré peut avoir un autre sens, celui d'agir c'est-à-dire de faire ce que le vendeur doit faire pour exerçer son droit,

says Laurent (Vol. 24 Principes de Droit Civil Français, p. 287). And although admittedly it is more natural to read the words "*l'action en réméré*" quoted from article 1662 as a processual phrase in the sense according to which they are equivalent to "*action en justice,*" it has been held nevertheless than the other less natural but admissible reading indicated by Laurent is more in consonance with the general effect of the provisions of the Code Napoléon dealing with *vente à réméré* (4 Aubry & Rau, 4th ed., p. 409, art. 357, note).

The courts of Quebec, it is evident, are called upon to decide a very different question from that which confronted the tribunals and the authors in France under art. 1662. In order to parallel in the question presented by art. 1662 the postulates of the question presented here it would be necessary to interpolate in art. 1662 words making that article read "*d'avoir exerçé son action en justice.*"

Secondly: It is not within the authority of the courts in construing art. 1550 to reject or disregard the English version. The Code as an authoritative exposition of the civil law of the Province of Quebec is

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founded upon statute. There was first an Act of the Province of Canada (20 Vict. ch. 43) authorizing the appointment of commissioners and directing that they should embody in the code to be framed by them, to be called the Civil Code of Lower Canada, such provisions as they should hold to be then actually in force giving the authorities on which their views should be based, but stating separately any proposed amendments. Then (the Commissioners having in due course framed their report and laid it before Parliament), there was another Act (29 Vict. ch. 41) declaring a certain roll attested in the manner described in the Act to be the original of the Civil Code reported by the Commissioners as containing the existing law without amendments; directing the Commissioners to incorporate in this roll certain amendments specified in a schedule; and eliminating and altering the provisions of the Code only so far as should be necessary to give effect to these amendments; and providing that the Code so altered should, on proclamation by the Governor, have the force of law.

The Code thus produced must be read, of course, in view of the fact that it is what it is, namely, a statement made under legislative authority of a system of civil law, a statement speaking broadly, explicit as to specific rules but in some measure as to underlying principles taking effect by implication and influence; particular rules and principles which may no doubt be misconceived or misapplied if considered in isolation from the general system of which they are elements. But the rule we are now called upon to put into effect, art. 1550, was one of those incorporated at the suggestion of the Commissioners as a new provision in amendment of the existing law, and as an amendment of the existing law it was ex-

plicitly adopted by the enactment of the legislature which gave it legal force; and in such cases the Code itself by art. 2615 (which is as follows):—

> If in any article of this Code founded on the laws existing at the time of its promulgation, there be a difference between the English and the French texts, that version shall prevail which is most consistent with the provisions of the existing laws on which the article is founded; and if there be any such difference in an article changing the existing law, *that version shall prevail which is most consistent with the intention of the article, and the ordinary rules of legal interpretation shall apply in determining* such intention,

indicates the rule by which we are to be guided although art. 1550 is not one of those in which when properly construed there is any "difference between the English and the French texts." How, following the ordinary rules of interpretation, is "the intention" to be ascertained? Primarily, of course, from the language employed interpreted by light of the requisite technical knowledge; and where—in such cases—that language construed of course in its entirety is quite without ambiguity and there is no qualifying context, there would appear to be only one course for a judicial tribunal to pursue: (*Robinson* v. *Canadian Pacific Railway Co.*(1), at pages 487-8). The "ordinary rules of interpretation" would hardly sanction the elimination of one version unequivocal in itself and harmonious with the natural reading of the other version in order to give to the article an operation resulting from a rather strained and less natural reading of the second version with which the rejected text could not by any process of interpretation be reconciled.

Two arguments have been addressed to us which deserve to be noticed. First, it is said that since the French version of art. 1550 is a literal transcription of an article of the Code Napoléon, the French version must

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be regarded as the original, and the English version as a translation. On the point of fact, I should say that was self-evident. But the English version no less than the French version is expressed in the language of the legislature or in language adopted by the legislature. Secondly, it is said that the Commissioners must be assumed to have known the course of the interpretation in France and that the report of the Commissioners shews their intention to adopt the law laid down in the Code Napoléon (art. 1662) as construed in France. The report of the Commissioners can be prayed in aid on the ground that it may be supposed to have been present to the mind of the legislature: *Eastman Photographic Materials Co.* v. *Comptroller-General of Patents*(1), at pages 575 and 576; and the Commissioners must no doubt be assumed to have been acquainted with the course of *la doctrine* and *la jurisprudence* in France. But in the last analysis we come to this: the Commissioners and the legislature, whatever presumptions are to be made with regard to other matters, must be presumed to have known the meaning of the words they used. Assuming then, that they had the general intention to adopt the law of the Code Napoléon—nevertheless the final and decisive statement of the effect of the concrete provision they did adopt, as they conceived it to be, is to be found in the unambiguous words of the English version. The French version reproduces the Code Napoléon; but the English version supplies a legislative interpretation which the courts are not at liberty to ignore. In this view the appeal must be allowed and the action dismissed.

Two other grounds of appeal of considerable importance are raised by the appellant. It is not neces-

(1) [1898] A.C. 571.

sary to pass any opinion on these and the only observation I make is this. Having regard to the opinion of Pothier given to the world in the 18th century and the opinion of a very eminent authority (Aubry & Rau) published before the adoption of the Quebec Code, as well as to the unbroken uniformity of *la jurisprudence* in France to the effect that the "right of redemption" reserved to the vendor under a contract of *vente à réméré* is *jus ad rem* only and not *jus in re*, I think it a very disputable question whether the opposite view, though held by almost all the reputable authors in France, including Laurent, ought to be given effect to.

ANGLIN J. (dissenting).—The question presented in this case is whether a vendor subject to right of redemption in order to exercise that right effectually is bound not only to signify to the purchaser his intention to redeem the property, accompanying the signification by a tender of the amount due, but, in the event of refusal by the purchaser to accept, is further bound to bring action to enforce his right of redemption within the period stipulated for its exercise. That the right of redemption absolutely terminates upon the expiry of the stipulated term unless it has been effectually exercised within the term and that it cannot be extended by the court is admittedly the effect of art. 1549. Indeed so strict is the law in this regard that the term runs against all persons including minors and those otherwise incapable in law, reserving to the latter such recourse as they may be entitled to: Art. 1551 C.C.

In the present case the stipulated term for redemption was ten years, the maximum term permitted by law: Art. 1548 C.C. Shortly before the expiry of the ten years the vendor notified the purchaser of his intention to redeem and tendered to him the amount

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to which he was entitled. Payment not having been accepted, he caused a notarial protest to be made before the expiry of the ten years. He did not commence his action to enforce his right of redemption, however, until several months after the expiry of the stipulated term.

Art. 1550 of the Civil Code, in the French and English versions, reads as follows:—

1550. Faute par le vendeur d'avoir exercé son action de réméré, dans le terme prescrit, l'acheteur demeure propriétaire irrévocable de la chose vendue.

1550. If the seller fail to bring a suit for the enforcement of his right of redemption within the stipulated term, the buyer remains absolute owner of the thing sold.

In the Court of Appeal it was pointed out that this article in the French version is an exact reproduction of art. 1662 of the Code Napoléon. The French authorities have held that the word *action* in the Napoléonic article should be read as meaning *faculté* or *droit*, and that a notification within the term of intention to redeem accompanied by tender is a valid and effectual exercise of the right which may be enforced by action brought after the expiry of the term. No doubt the jurisprudence of the Province of Quebec, with the exception possibly of the case of *Walker* v. *Sheppard*(1), supports the same view of art. 1550 of the Civil Code, and my lord the Chief Justice and my brother Brodeur also adopt it. It is therefore with the utmost diffidence that I venture to express the contrary opinion.

As Mr. Mignault pointed out, however, in his able argument, the construction placed by the French authorities on art. 1662 of the Code Napoléon depends largely upon the use of the term *action* interchangeably with the words *faculté* or *droit* in arts. 1664, 1668

(1) 19 L.C. Jur. 103.

and 1669 C.N. (See Beaudry-Lacantinerie, No. 615, 24 Laurent, No. 397) which form the context of art. 1662. On the other hand in the corresponding provisions of the Quebec Civil Code, arts. 1552, 1556 and 1557, which form the context of art. 1550, we find the words *faculté* and *droit* apparently used in contradistinction to the word *action* used in art. 1550. Thus for the word *action* used in art. 1664 of the Code Napoléon the Quebec Code in art. 1552 substitutes the word *faculté*. Likewise for the word *action* in art. 1668 of the Code Napoléon we find in art. 1556 of the Quebec Civil Code the word *faculté*. In art. 1669 of the C.N. the word *faculté* is used obviously in the same sense in which the word *action* had been used in art. 1689, whereas the Quebec Civil Code in art. 1557 employs the word *droit* as the equivalent of the word *faculté* used in art. 1556. The Quebec Code in arts. 1559 and 1560 likewise replaces the phrase *l'action en réméré* of articles 1671 and 1672 of the Code Napoléon by the phrase *faculté de réméré*. Articles 1546 and 1547, the provisions of the Quebec Code corresponding to article 1673 C.N. (which Laurent, vol. 24, No. 397, relies on as conclusive of the interpretation of the phrase *exercer l'action de réméré* in the Code Napoléon, because it immediately follows articles 1671-2 and the phrase "*use du pacte de rachat*" is found in it used, as he says, in the same sense as "*exercer l'action en réméré*" in those articles) are placed at the opening of the section and have there no such significance. Indeed in the whole section of the Quebec Civil Code intituled "*Du droit de réméré*" (arts. 1546-1560) the phrase "*action de réméré*" occurs only once, viz., in art. 1562. One of the chief reasons, therefore, for the construction placed by the French authors upon the language of art. 1662 C.N. does not exist in regard to art. 1550 of the

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Quebec Civil Code, and in view of the changes made in the terms in which arts. 1664, 1668, 1669, 1671 and 1672 of the Code Napoléon have been substantially reproduced in the Quebec Civil Code, there seems less reason than in other cases where that occurs for the conclusion that in reproducing art. 1662 C.N. *in ipsissimis verbis* the Quebec codifiers meant to adopt it with the construction placed upon it by the French authors. The phrase "*cette faculté*" in art. 1552 C.C. I think obviously refers to "*faculté de réméré*" in arts. 1546 and 1548 and not to "*action de réméré*" in art. 1550.

But a stronger argument in favour of the contention of the appellant is presented by the clear and unequivocal terms of the English version of art. 1550. Whatever may be said of the meaning of the phrase, *d'avoir exercé son action de réméré*, there can be no room for doubt as to the meaning of the words "to bring a suit." Both the English and the French versions of the Code are of equal authority. The article in question is one which changed the pre-existing law and in such a case where there is a difference between the English and the French texts art. 2615 provides that

> that version shall prevail which is most consistent with the intention of the article and the ordinary rules of legal interpretation shall apply in determining such intention.

In the present case there is in reality no difference between the English text and the French text if the language of the latter be given its primary meaning. Whatever secondary meaning may be attached to it where the contract seems to require a different construction, the primary meaning of *action de réméré* is "action of redemption." The two versions of the Code must be read together, and, while one may undoubtedly be used to interpret the other, where the

language used in each taken in its primary sense means a certain thing and in the English version is not susceptible of any other meaning the fact that French authorities have put another construction on the words of the French version when accompanied by a different context does not seem to afford a sufficient ground for departing from the primary meaning. The language of Lord Herschell in *Bank of England* v. *Vagliano Bros.*(1), is applicable to the Civil Code of Quebec: *Robinson* v. *Canadian Pacific Railway Co.*(2), at page 487. The comments of the Codifiers (vol. 2, pp. 18 & 19) make it clear that it was their intention to amend the old law by doing away with its uncertainties and holding the parties to an agreement for redemption strictly to the term stipulated without allowing the courts to extend it or requiring a judgment to declare the right extinct. If in determining a question as to whether the English or the French version of the Code should prevail where they differ it is material to know in which language the provision was originally drafted, the fact that in the report of the Codifiers the authorities are cited under the English version in the title with which we are dealing would indicate that this portion of the Code had been originally drafted in that language: Vol. 2, p. 61.

No doubt it seems a harsh provision that a person entitled to redeem whose tender of the amount due has been wrongfully rejected should be obliged to bring suit for the enforcement of his right within the stipulated term as a condition of preserving it. Moreover the obligation of bringing suit probably has the effect of curtailing the term within which the tender may be made and puts upon the vendor the necessity

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of anticipating that his legitimate offer may be wrongfully refused, and of leaving himself in that event, sufficient time to bring his action before the expiry of the term. But the existence of these obvious difficulties does not afford a sufficient reason, in my opinion, for ignoring the explicit and unmistakable language of the English version of art. 1550.

I am, for these reasons, with great respect, of the opinion that this appeal should be allowed.

BRODEUR J.—This appeal should be dismissed with costs.

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