

omitted to perform this duty, and so were negligent. Accordingly I give judgment for the plaintiff for the amount of damages agreed on between the parties, with costs.

Judgment for plaintiff.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, June 28, 1881.

Before TORRANCE, J.

BÖCKER v. FOREMAN et al., and THE BANK OF TORONTO, intervening.

Procedure—Intervention.

A demand in intervention may be made at any time before judgment.

PER CURIAM. After issue joined, trial was had before me on the 8th June, and the case was taken *en délibéré*. Since then an intervention has been filed by a third party, and the question is whether it should be allowed.

After consultation with my brother judges, seeing the precise terms of the Code as to interventions, I think there is no doubt that an intervention may be put in at any time before judgment.

The intervention, therefore, is allowed to be filed, and the *délibéré* is discharged.

Intervention allowed.

L. N. Benjamin for plaintiff.

Kerr, Carter & McGibbon for defendants.

R. & L. Laflamme for intervening party.

SUPERIOR COURT.

MONTREAL, June 27, 1881.

Before MACKAY, J.

COSSITT et al. v. LEMIEUX.

Capias—Special Bail—Statement.

A defendant who has given bail not to leave the country is not bound to file a statement and make the declaration of abandonment mentioned in Art. 764 C.C.P., within 30 days from the date of the judgment rendered in the suit in which he was arrested.

The case came up on a petition for *contrainte* against the defendant, for not having made a *bilan* and declaration of *cession de biens*.

On the 19th October, 1880, the plaintiffs obtained judgment against defendant for \$2,134.45.

Subsequently they caused a *capias* to issue against him, on the ground that immediately after judgment, and before execution issued thereon, he had been fraudulently secreting all his property and effects.

The defendant was arrested Dec. 23, 1880, and on the 27th of the same month was set at liberty, on giving security that he would not leave the Dominion of Canada without paying the plaintiffs' debt. On the same day, Dec. 27, he presented a petition to quash, and on the 27th April, 1881, the petition to quash was rejected (*Taschereau, J.*), the judge stating that the allegations of the affidavit were corroborated by the evidence.

On the 10th May, 1881, judgment was rendered by the Superior Court, declaring the *capias* good and valid.

On the 17th June, 1881, more than thirty days after the date of the judgment maintaining the *capias*, the present petition for *contrainte* was presented, on the ground that thirty days had elapsed, and the defendant not having deposited his *bilan*, nor made a declaration of *cession de biens*, was *contraignable par corps*. C.C. 2274, and C.S.L.C., cap. 87.

The defendant resisted the petition, assigning the following grounds:—

"Que le défendeur a été rendu à la liberté en fournissant cautionnement qu'il ne laisserait pas le pays;

"Que ce cautionnement spécial n'est pas forfait, et que partant le demandeur n'a aucun droit d'obtenir les conclusions de sa requête;

"Qu'en vertu du dit cautionnement et en vertu de la loi, le défendeur ne saurait être emprisonné pour les causes mentionnées en la dite requête."

MACKAY, J. The defendant was arrested 23rd December, 1880. He gave bail before the prothonotary on the 27th December, and was discharged in consequence. The condition of the bond was that he would not leave Canada without paying plaintiffs; his bail were bound to pay if he should leave without settling.

The plaintiffs now say that thirty days have passed since the judgment maintaining the *capias*, and no *bilan* or *état de ses biens* has yet been filed by defendant. *Contrainte* is asked, and the arrest of defendant.

The question as to the obligation of a defendant who has given special bail to file a