

resident in Beauharnois, the property in question being situate in Terrebonne, gives the Court in Montreal jurisdiction.

This was an action to compel the defendant, resident in the District of Beauharnois, to carry out a promise, which the plaintiff alleged had been made by correspondence and telegrams, to purchase certain immoveable property situate in the District of Terrebonne, and to execute a deed of sale, which had been duly tendered to defendant;—the plaintiff asking by the conclusions of his declaration that the judgment should avail in place of the deed in default of defendant's executing the same.

The defendant was personally served in the District of Montreal, and denied the jurisdiction of the Court by a declinatory exception alleging that the action was a real or mixed one, involving the title to lands in another district, and contending that he should have been summoned before the Court of his domicile, or of the district where the immoveable was situate, under article 37 of the Code of Procedure.

Fleet, for the defendant, cited Dalloz, Jurisprudence, Vol. I, p. 228, subj. Mixed Actions.

H. Abbott, for plaintiff, cited Bonjean, Actions, Vol. II; §§ 273-5, 289, 292; Poncet, Traité des Actions, Titre 2, cap. 8, and cap. 10, sections 1, 2 & 3; *Scriver v. Stapleton*, 2 L. N. 190; *Menzies v. Bell*, 3 L. N. 159.

The Court held that the action was purely personal, and dismissed the exception. The following is the judgment:—

“Attendu que le demandeur poursuit le défendeur à raison d'une obligation que ce dernier aurait contracté envers lui;

“Attendu qu'il allègue avoir vendu un immeuble au défendeur, et qu'il demande qu'il en soit passé acte afin de constater la dite vente;

“Considérant que par la loi la dite vente a eu pour effet de transporter la propriété du dit immeuble au dit défendeur du moment qu'elle a été consommée;

“Considérant que l'action personnelle est celle par laquelle on agit contre celui qui est obligé envers soi;

“Considérant que l'action réelle est celle par laquelle on agit contre quelqu'un, non en vertu d'une obligation qu'il aurait contractée, mais seulement à raison de la possession qu'il a d'une chose qu'on réclame ou qu'on prétend affectée d'un droit à son profit;

“Considérant que la présente action est purement personnelle et non réelle, et que l'assignation du défendeur devant la Cour Supérieure pour le district de Montréal est régulière et légale;

“Déboute le défendeur de son exception declinatoire avec dépens.” &c.

Abbott, Tait & Abbotts for plaintiff.

Robertson & Fleet for defendant.

[A motion by the defendant to be allowed to appeal from this judgment was rejected by the Court of Appeals, 28 Nov., 1882.]

SUPERIOR COURT.

MONTREAL, NOV. 25, 1882.

Before TORRANCE, J.

SEERY v. THE ST. LAWRENCE GRAIN ELEVATING CO. and THE ST. LAWRENCE GRAIN ELEVATING CO., plff. *en garantie*, v. THE MONTREAL ELEVATING CO., deft. *en garantie*.

Procedure — Amendment of Writ and Declaration.

The allowance of amendments to the writ and declaration is not subject to a fixed rule. The Court, in its discretion, will grant or refuse permission to amend, as may best tend to the furtherance of justice.

The defendant, plaintiff *en garantie*, made a motion to amend the writ and declaration, by erasing the word “elevating” wherever it occurred.

L. H. Davidson, for the defendant *en garantie*, *e contrà*, cited *Laurent v. Picard*, 4 Q. L. R. 73; *Pouliot v. Solo*, 5 Q. L. B. 326.

PER CURIAM. The motion is granted on payment of costs to the attorney of the defendant *en garantie*, and of his disbursements on the exception and its incidents. *Vide* C. C. P. Louisiana, with notes by M. Greiner, pp. 72 & 154. In Louisiana, it is allowed to plaintiffs to set out their full names after an exception on that ground. *Vide Dubuys v. Mollere*, 2 N. S. 627. The rule appears to be that amendments are reducible to no certain rule; but that each particular case must be left to the sound discretion of the Court; and that the best principle is that an amendment should or should not be permitted to be made, as it would best tend to the furtherance of justice. 7 Durn. & East, 699.

Motion granted.

Robertson & Fleet, for plaintiff *en garantie*.
L. H. Davidson, for defendant *en garantie*.