## NOTES OF CASES.

### COURT OF REVIEW.

Montreal, September 29, 1883.

*Before* TORRANCE, RAINVILLE and JETTÉ, JJ.

WALTERS v. MAHAN et al.

*Negotiable instrument—Pleading—Proof incumbent on holder.*

*It is not incumbent on the person producing a bill or note to prove consideration, if the instrument contains the words "value received," unless fraud be alleged and proved by the defendant.*

TORRANCE, J. This was an action on a promissory note against maker and indorser for value received. The plea denied the receipt of value, and alleged forgery of the signature of the maker. The plea was maintained. I find that the signature of the maker Forget, was made by a cross and duly witnessed by the witness Bonin. There is no proof of value by the holder, and if fraud had been alleged and proved by Forget, it would have been incumbent upon the plaintiff to prove consideration, on the authority of Lord Campbell in *Fitch* v. *Jones*, 5 B. & Ellis, 245. Failing such allegation and proof, plaintiff is entitled to recover.

As the case is put before us, the plaintiff is presumed to have given value;—C. C. 2285, and being in good faith, and an innocent holder, Forget should suffer and not he.

JETTÉ, J., dissented.

Judgment reversed.

*Macmaster, Hutchinson & Weir* for plaintiff.
*Mercier, Beausoleil & Martineau* for Forget.

### COURT OF REVIEW.

MONTREAL, September 29, 1883.

*Before* TORRANCE, RAINVILLE, MATHIEU, JJ.

TRUDEL v. STRONG.

*Procedure—Requête Civile.*

*Where the Court had granted leave to defendant, after foreclosure, to file a plea, but the plea was not produced, and the plaintiff made his proof exparte and obtained judgment, held, that the requête civile subsequently presented by defendant was properly dismissed, notwithstanding the affidavit of his counsel alleging that there was an agreement between him and the plaintiff's attorney that the case should not be proceeded with.*

TORRANCE, J. This was the merits of a judgment rendered in the District of Terrebonne on the 23rd June last, dismissing a *requête civile* presented by the defendant. The *requête* alleged that the judgment in favor of plaintiff, rendered on the 24th March, had been obtained by fraud and surprise. The procedure preceding the judgment was as follows:—The action was returned on the 20th January. On the 21st February the defendant was foreclosed from pleading. On the 24th February the plaintiff inscribed for proof exparte on the 20th March. On the 20th March, the defendant made a motion to be allowed to file the plea herein. It was granted on payment of certain costs. The plea was not produced. On the following day, the 21st, the plaintiff made his proof in the absence of the defendant, and then inscribed for hearing on the 24th March, serving the inscription at the office of the prothonotary in the absence of any other domicile of the defendant at Ste. Scholastique. There is no evidence in support of the *requête* excepting the procedure and the affidavit of the attorney of the defendant. He swears that there was an agreement between him and the attorney of the plaintiff that the case should not be proceeded with, and the petition further says that after the judgment allowing the plea to be filed, the plaintiff could not proceed without putting the defendant *en demeure* to produce his plea. There is no evidence of the *entente* between the attorneys apart from the affidavit, and the plea had not been produced as implied by the motion. The Court below dismissed the petition as without proof, it had the parties before it from day to day, it allowed defendant to produce his plea instanter without delaying plaintiff. He did not avail himself of the permission. Plaintiff proceeded, and the Court here confirms the judgment.

Judgment confirmed.

*Pagnuelo & St. Jean* for petitioner.
*Prevost & Turgeon* for plaintiff.