because the money did not belong to the agent, but to his father. The plaintiff therefore found himself not only without evidence, but with evidence that disproved the allegations in his declaration. If this young man charged five per cent commission instead of two or three, the Court had nothing to do with that. Persons exacted more for their time or the use of their money according to the demand. The judgment must be reversed, and the action dismissed.

Dorion & Dorion for appellant. C. Archambault for respondent.

June 7, 1865.

LEGENDRE *et al*, (defendants below) appellants, and FAUTEUX (plaintiff) respondent.—This was action brought to recover the sum of $866, amount of a promissory note. The defendants pleaded that some hours before the institution of the action, the plaintiff offered to take $200 in cash, and notes for the balance; that defendant offered this amount, but that then plaintiff wished to charge interest at the rate of twenty per cent on the notes accepted. Defendant refused to pay any interest at all, but after plaintiff had instituted his action he offered interest at the rate of six per cent. This offer was rejected, and judgment having been rendered in plaintiff's favor in the Court below the defendants appealed.

MEREDITH, J., dissenting, thought the judgment should be confirmed. Though nothing appeared to have been said about interest, yet it must be presumed that the plaintiff intended to charge 6 per cent. It could not be presumed that a trader, dealing with a view to profit, intended to give up the interest which the law allowed him. If there had been a tender of 6 per cent. in time, it would have been all right, but the tender was not made till costs had been incurred.

MONDELET, J., also dissented.

DUVAL, C. J., thought it was quite clear that the understanding was there should be no interest charged. He thought the plaintiff's conduct in charging interest was a violation of that understanding.

DRUMMOND, J., concurred in the opinion that the convention between the parties as proved contained not a word about interest.

Judgment reversed, Meredith, J., and Mondelet, J., dissenting.

D. D. Bondy for Appellant; R. & G. Laflamme for Respondent.

GREGORY (defendant below), Appellant; and IRELAND (plaintiff below), Respondent; and the same party, appellant, and the Boston and Sandwich Glass Company, Respondent. DUVAL, C. J.—The first of these cases turned upon the sufficiency of the affidavit for *capias*, and the second as to whether the debt was contracted in a foreign country. As to the sufficiency of the affidavit, the words wanting in one part were supplied in another, where the same allegation was repeated. As to the place where the contract was entered into, the Court was of opinion that it was in Montreal. As to the grounds which the plaintiff had for making the affidavit, there could be no doubt that the facts fully justified him in doing so. The defendant had previously run away from the Province. Not only was he insolvent, and without means of paying his debts, but he carried off $400 belonging to his partner in Montreal, which sum he applied to the purchase of a grocery business in New York.

DRUMMOND, J., had been inclined to dissent on the ground of insufficiency of the affidavit, and probably would have done so, had it not been so clear a case of fraud on the part of Appellant.

Judgment confirmed in both cases unanimously.

Leblanc & Cassidy for Appellant; J. L. Morris for Respondent.

MONETTE (defendant below), Appellant; and PHANEUF (plaintiff below), Respondent.—This was an appeal from a judgment condemning defendant to pay $237. due on a note. The defendant contended that the note had been altered in two places, *deux cents* having been substituted for *cent*, and the words *à douze par cent* having been added.

MEREDITH, J., dissented in part. He agreed with the majority of the Court in thinking that the words *à douze par cent* had been added.

DRUMMOND, J., said it was quite evident the words *à douze par cent* had been added after the words *avec intérêt*, and he considered that there was positive proof that the words had been added after the note was made. The pretext of the plaintiff that he did not do business on a Sunday was absurd, it being the custom in the country parishes after mass to settle accounts &c., and his scruples of conscience did not prevent him from altering the note.

Judgment reversed, Meredith, J., and Mondelet, J., dissenting.

Dorion & Dorion for Appellant; Doutre & Doutre for Respondent.

HANOWER (plaintiff below), Appellant; and WILKIE (defendant below), Respondent.

Held,—That there is nothing incompatible between the allegation of a verbal lease and a count for use and occupation.

This was an action for rent under a verbal lease, with a count added for use and occupation. The action was dismissed in the Court below, on the ground that the plaintiff had not proved the verbal lease, and that the count for use and occupation could not avail him.

MONDELET, J., dissenting, was of opinion that judgment should be confirmed.

DRUMMOND, J., thought the form of action for use and occupation one of the most useful we had, and he accepted it accordingly. There was nothing incompatible between the allegation of a verbal lease and the count for use and occupation. The latter ought to follow the former.

Judgment reversed, Mondelet, J., dissenting, and judgment given in favor of plaintiff for $70, balance of rent.

James Armstrong for Appellant; Johnson & Piché for Respondent.

QUEEN *vs.* ELLICE.—Peremptory exception rejected.