

and the breach. The statute made that a condition precedent to recovery.

No question was raised as to the regularity of the proceedings in the New Brunswick Court. The observations of Lindley, M.R., in *Pemberton v. Hughes* (1899), 1 Ch. at 792, are quite pertinent, as to the competency of the New Brunswick Court.

The stenographer, at my instance, took a full note of the argument of counsel which I shall file with this, and as forming part of the proceedings on the trial.

Inasmuch as there was a breach in New Brunswick of the contract to pay there, the Court, in which the judgment was rendered, so far as the subject matter of the action is concerned, was a Court of competent jurisdiction. The judgment so far as New Brunswick is concerned must therefore be deemed to be valid and enforceable there.

The liability to pay at the plaintiff's home arises from a general principle of law that the debtor must seek his creditor and pay, and this is, I take it, supplemented by the Bills of Exchange Act, which applies equally to the place of payment as well as the place where the contract was made. I regard it therefore as, in effect at least, an express contract to pay in New Brunswick.

The judgment must of course be regarded as a foreign one, nevertheless I submit it cannot be fairly said that the sense in which foreigners, that is aliens, are referred to or regarded in the various decided cases relating to judgments of a foreign country against foreigners, I mean aliens, should be held applicable to British subjects living in different provinces of Canada, and who are affected by the Bills of Exchange Act in the same degree. If I correctly apprehended what Lord Selborne said in *Sirdar v. Rajah of Faridkote* (1894), A. C. at the top of page 684 it supports this distinction. The judgment sought to be enforced there was recovered in a country not forming part of the British Empire against a party who was an alien as to that forum; if I am right as to this, then Lord Selborne's observations must be regarded in the light of that situation alone, and should not be held to extend beyond that. Piggott, at pages 7, 207 and 208, points out a conflict between the case just mentioned and that of *Ashbury v. Ellis* (1893), A. C. 339. I understand the law to be that a judgment recovered in a foreign country against an alien who has