

actually reached the party making it, but the mailing in the general post office of such letter completes the contract, subject, however, to revocation of the offer by the party making it before receipt by him of such letter of acceptance. *Underwood v. Maguire*, Q.R. 6 Q.B.B. 237, was overruled. Article 85 of the Civil Code, as amended by 52 Vict., c. 48 (Que.), providing that the indication of a place of payment in any note or writing should be equivalent to election of domicile at the place so indicated, requires that such place should be actually designated in the contract.

In forming an opposition or petition in revocation of judgment the defendant, in order to comply with art. 1164 C.P.Q. is obliged to include therein any cross demand he may have by way of set-off or in compensation of the plaintiff's claim, and unless he does so, he cannot afterwards be permitted to file it, as of right.

A cross demand, so filed with a petition for revision of judgment is not a waiver of a delinatory exception previously pleaded therein, nor an acceptance of the jurisdiction of the court.

In order to take advantage of waiver of a preliminary exception to the competence of the tribunal over the cause of action on account of subsequent incompatible pleadings, the plaintiff must invoke the alleged waiver of the objection in his answers.

The judgment appealed from, affirming the decision of the Superior Court, District of Quebec (Q.R. 16 S.C. 22), was reversed.

Appeal allowed with costs.

Fitzpatrick, K.C. and *Brodeur*, K.C., for appellant. *Hogg*, K.C. and *Taschereau*, K.C., for respondents.

Province of Ontario.

COURT OF APPEAL.

From McDougall, Co. J.]

[June 6.

REX v. MARCOTT.

Criminal law—Fortune telling—Criminal Code, s. 396.

Deception is an essential element of the offence of "undertaking to tell fortunes" under s. 396 of the Criminal Code, and to render a person liable to conviction for that offence there must be evidence upon which it may be reasonably found that the person charged was, in so undertaking, asserting or representing, with the intention that such assertion or representation should be believed, that he had the power to tell fortunes, with the intent in so asserting or representing of deluding and defrauding others. In this case the evidence set out in the report was held to be sufficient. Judgment of McDougall, Co. J., affirmed.

Du Vernet, for appellant. *Cartwright*, K.C., for Crown.