

we do not think it desirable to reopen the question in these columns. Mr. Justice Sanborn, who dissented in *Walker & Sweet*, said all that there was to be said on the one side, and the judgment of the Court of Appeal has finally settled the law in the opposite sense. We do not see that it would be possible for a Judge sitting in a lower court to disregard the authority of that case, if it were cited before him. We shall, therefore, content ourselves with an extract from Mr. Pacaud's letter, which is explanatory of the action brought.

He says: "The action in that case (*Fiset v. Fournier*) was not founded upon the promissory note, which the plaintiff acknowledged by his declaration was prescribed, but it was based upon the acknowledgment of the debt and the promise to pay the same, made by the debtor in presence of a witness in June or July last.

"It seems to me that this acknowledgment and promise were sufficient to constitute a new obligation on the part of the debtor, and that that was a perfect contract in itself according to the rules established by arts. 982, 983 & 984 C. C., which contract the plaintiff could get enforced in law.

"The promissory note was merely mentioned in the declaration, to show how the debt had originated. The action did not rest at all upon the note, which was absolutely prescribed and no action could be brought upon it, but it rested upon the acknowledgment of the debt and the promise to pay the same made by the debtor.

"Prescription is merely a presumption of payment. The debtor may renounce to the benefit of that prescription by acknowledging that he owes the debt, and art. 2227 C. C. expressly says: 'Prescription is interrupted civilly by renouncing the benefit of a period elapsed, and by any acknowledgment which the possessor or debtor makes of the right of the person against whom the prescription runs.'

Then follows a reference to the works of French authors. The lengthy discussions to which this question has given rise, and the different opinions which have been advanced, show that the point is one of serious difficulty. A word or two in the Code would have placed the matter beyond all doubt; but we consider that the Code has now been interpreted in a manner which does not admit of further debate.

REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, Dec. 20, 1878.

JOHNSON, J.

LEONARD V. LEMIEUX.

Surety—Lease terminable on Notice.

A person who is surety for a tenant holding under a lease terminable on giving six months' notice, cannot exercise the right stipulated in favor of the tenant, if the latter fails to exercise it.

JOHNSON, J. The defendant is *caution solidaire* for the rent of a house, together with the tenant, who took it under a lease for five years, with a right to terminate at the end of any one year by giving three months' notice. This right the tenant never exercised; but at the end of the first year continued to occupy, and on the 1st June there were six months' rent due, and the defendant being sued pleads that he gave notice last January, that he wanted to terminate his obligation; and it was maintained before me that he had this right. I can only say now, as I said at the hearing, that if he has, a tenant who apparently would not be trusted without furnishing security, will find himself able to occupy the place for the whole term of the lease without any security whatever. Plea dismissed. Action maintained for amount demanded.

Tailon for plaintiff.

J. E. Robidoux for defendant.

LANDA V. POULEUR.

Damages for Malicious Prosecution—Bad reputation of Plaintiff—Compensation.

1. Proof that the plaintiff had been formerly convicted of attempting to have carnal knowledge of a girl under eleven years of age will be admitted in mitigation of damages, in an action for malicious prosecution for bigamy.

2. A judgment obtained by defendant in right of his wife against plaintiff may be pleaded in compensation of damages claimed for such malicious prosecution for bigamy.

JOHNSON, J. This is a somewhat singular case. The parties are both of them Belgians, domiciled here; and the plaintiff's action is for damages, on account of the defendant having caused his arrest and prosecution for