

IV. L'opposante n'avait que l'opposition afin de charge.

C. de Proc., Art. 659; Pothier, Procéd., p. 234; Ferrière, Coutume de Paris, vol. 2, p. 474; Ferrière, Dict. de Droit, vbo. opposition, p. 296, col. 2.

L'opposante cita : 2 Chabot, Quest. transitoires, vbo. Droits acquis, pp. 88, 90, 92, 93, idem loc. cit. vbis. douaire coutumier, pp. 33, 34, 42, 61, 65; 4 Legal News, p. 71, opinion de l'hon. juge Rainville, C. S. Rév; Art. 1427, C. C.; 1 Pigeau, proc. civ. pp. 762 et 763; 10 Q. L. R. p. 136, l'Hopital Général v. Gingras, C. S. Casault, J.; Roy v. Roy, 13 R. L., p. 380, Mathieu, J.

Jugement en révision :

"Considering that the plaintiff's judgment under which she has taken in execution the immoveable in this cause seized, is for arrears of a life rent created on the said immoveable in her favor by deed of donation by her and her deceased husband to the opposant's deceased husband prior to opposant's marriage with him;

"Considering that the right of the opposant in said immoveable is merely one of usufruct during her life and ought to be claimed by her by an opposition *afin de charge* and subject to the obligation on her part of giving to the plaintiff security that the said immoveable would be sold for a sufficient sum to assure to the plaintiff payment of her life rent;

"Considering that the plaintiff is entitled to bring to sale forthwith the whole of the said immoveable without regard to the action *en partage* brought by the opposant, and the opposition by the opposant filed to said sale is unfounded, and that there is therefore error in the judgment rendered by the Superior Court for the district of Saguenay on the 3rd March, 1886, maintaining the said opposition;

"Doth hereby reverse the said judgment and doth hereby dismiss the said opposition with costs, as well of said Court of first instance as of this Court of Review, distracts, etc."

Charles Angers, proc. de la contestante.

J. S. Perrault, proc. de l'opposante.

(C. A.)

CIRCUIT COURT.

HULL, (District of Ottawa), May 6, 1887.

Before WÜRTELE, J.

GUEST V. CARLE & DUNN.

Procedure—C.C.P., Arts. 34, 69—Summons—
Matters purely personal.

HELD:—That the Courts in the Province of Quebec have no jurisdiction, in matters purely personal, over persons residing in the Province of Ontario, when they have no property in the Province of Quebec, when the cause of action did not arise therein, and they have not been personally served within the territorial jurisdiction of such Courts.

PER CURIAM.—This suit is founded upon a promissory note, made and signed by the defendant Carle, in the city of Ottawa, and Province of Ontario, and endorsed there by the other defendant Dunn.

The defendant Dunn resides in the city of Ottawa, and the action was served upon him there. He has not filed a declinatory exception; but in his pleas to the merits he invokes the want of jurisdiction.

Under article 34 of the C.C.P. our Courts have jurisdiction in matters purely personal, when the defendant has his domicile in the territorial jurisdiction of the Court, when the defendant is personally served in such territorial jurisdiction, and when the right of action originates within such territorial jurisdiction. Under article 68 the Courts have jurisdiction over non-residents who have property in this Province; and under article 69 the Courts have also jurisdiction over residents of the other Provinces of the Dominion, when they have property in this province, or when the cause of action arose therein.

In the present case the defendant Dunn resides in the Province of Ontario, he has not been personally served within the limits of the county of Ottawa, which forms the territorial jurisdiction of this Court; it is not alleged, nor shown by affidavit or otherwise, that he has property within the county of Ottawa; and the cause of action arose without the province. He is therefore not amenable to the jurisdiction of this Court.