

where the action is on a promissory note. The security was dated 1st June, 1899, for \$1,000, payable in 3 years, with interest at 6 per cent. The payment of interest on 1st July last is admitted.

Defendant's affidavit states "that the note sued on was given to plaintiff on the understanding that the same was merely an acknowledgement, upon which I had to pay \$5 a month so long as she lived; the principal after her death to go to me or my representatives as my share of her estate."

Defendant was not cross-examined, but plaintiff filed an affidavit in reply denying the statement of defendant. Plaintiff was not cross-examined.

Mr. Ludwig argued that the alleged defence could not be heard, as it was an attempt to vary the terms of a written instrument by a contemporaneous parol agreement, citing *New London v. Neale*, [1898] 2 Q. B. 487.

Mr. Kent relied on *Jacobs v. Booth's Distillery Co.*, 85 L. T. R. 262. . . . I am not able to see how the present case differs. I think the circumstances are more favorable to defendant than they were there, and I feel compelled to dismiss the motion. . . . Costs to defendant in the cause.

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JUNE 29TH, 1903.

DIVISIONAL COURT.

STEWART v. GUIBORD.

*Equitable Execution—Declaration of Right to Apply Amount due to Plaintiff by One Defendant against Co-defendant—Foreign Judgment—Simple Contract Debt—Declaratory Judgment—Ineffective Proceeding—Statute of Limitations—Absence of Defendant from Province.*

Plaintiff had a claim against the Government of Canada for \$1,500, and he was indebted to defendant Lallemand in a considerable sum. Lallemand was in financial difficulties and assigned to defendant Guibord his claim against plaintiff. Guibord brought an action in the Province of Quebec against plaintiff upon this claim, whereupon the Montreal Rolling Mills Co., having a judgment in the Province of Quebec against Lallemand, intervened and sought to seize the debt against plaintiff, alleging that it was in fact the property of their debtor, and was held by Guibord only as trustee. The company, however, finding themselves unable to prove their case, withdrew their intervention; then plaintiff settled the action by assigning to Guibord his claim against the Government, and Guibord released him from the debt.