

E. Barnard, à contra, cited *Kierskowski & Morrison*, 6 L.C.R. 159, and *Kingsley v. Dunlop*, 3 R. L. 448.

TORRANCE, J. There has been no new legislation since *Kierskowski & Morrison*, and in that case the majority of the Court of Appeal held that a special replication could be filed by a defendant without leave of the Court. A majority of the Court of Review appear to have held the same in *Kingsley v. Dunlop*.

Motion dismissed.

S. Bethune, Q. C., for plaintiff.

E. Barnard, for defendants.

MONTREAL, Oct. 15, 1880.

BELISLE v. PELLERIN, & DUGAS, opposant.

Action in formâ pauperis—*Proceedings after judgment*.

A plaintiff who has obtained leave to sue in formâ pauperis, does not require a new authorization to contest in formâ pauperis an opposition to the execution of the judgment.

The plaintiff had sued *in formâ pauperis*. After judgment, he took out execution, and the opposant filed an opposition. Thereupon the plaintiff filed a contestation of the opposition. The opposant now moved the Court to reject the contestation, on the ground that the contestant had not been authorized to contest *in formâ pauperis*.

TORRANCE, J., held that the opposition and contestation were incidents to the execution of the judgment in favour of plaintiff, and that a new authorization to contest *in formâ pauperis* was not necessary.

Motion rejected.

Driscoll, for plaintiff.

Martineau, for opposant.

SUPERIOR COURT.

MONTREAL, June 30, 1880.

MONTCHAMPS et al. v. PERRAS.

Obligation — Interest — Stipulation in contract — Prescription.

An obligation containing an undertaking to pay a sum of money on a fixed day "pour tous délais à peine, &c.," or "sans intérêts pendant délai," implies an undertaking to pay interest on the sum from the day the payment becomes due.

A clause of a contract, though not relating to the

principal object of the convention, makes proof of its contents when it contains a separate and distinct obligation.

A payment of one sum exceeding \$50, as the total arrears of interest on two obligations, and the creditor's acknowledgement to that effect, cannot be proved by verbal testimony,

Interest on obligations is prescribed by five years.

Action for nine years' interest at 8 per cent. on two obligations;—the first, of date 21 March, 1853, for 4,000 livres, stipulated: "Laquelle somme de 4,000 livres du dit cours, le dit débiteur promet et s'oblige la payer, bailler et rembourser au dit créancier ou à son ordre dans un an de cette date pour tous délais, à peine, &c.;" and the second, of date 7 January, 1864, contained this clause: "Laquelle dite somme le dit débiteur promet et s'oblige à payer au créancier ou à son ordre, dans le mois de Mai prochain, sans intérêts pendant délai."

The defendant pleaded that he had paid all the interest, on demand, up to the institution of the action, and he also pleaded the five years' prescription. He contended that interest ran only from the date of the demand.

At *enquête*, the plaintiffs produced a third obligation, of date 19 July, 1866, for a different loan. But in this obligation there was a clause stipulating that interest should be payable on the two obligations first mentioned at eight per cent.

The defendant brought up his son to prove that in March, 1879, he had paid \$70, for all arrears of interest due up to that date on the two obligations sued upon.

RAINVILLE, J., held that where obligations contain the clauses quoted above, interest commences to run from the expiration of the time stated, without putting *en demeure*;—*Rice v. Ahern*, 6 L. C. J. 201. The clause in the obligation of 1866, though not relating to the principal object of the contract, made complete proof of itself, and fixed the rate of interest at eight per cent;—*Larombière*, vol. 4, art. 1320. As to the payment of \$70, which the defendant had attempted to prove by the evidence of his son, it could not be proved by verbal evidence, being over \$50. The plea of prescription was well founded, and judgment would go for the plaintiffs, for five years' arrears only.

Mousseau & Archambault for plaintiffs.

De Bellefeuille & Bonin for defendant.