to object materials, or the performance of extra work. Nor is there any stipulation as to the terms when the contract is, on the part of the defendant to be fulfilled. Without importing these into the contract, it would be very imperfect and would not be what it is plain was within the intention of both plaintiff and defendant in entering into it.

But if for the purpose of giving effect to what the parties certainly intended, it is necessary to give a more extended meaning to the word specifications annexed to the contract, then its common acceptance warrants, or in other words if we cannot but see that such was the meaning in which it was used, and that it refers to the instrument annexed in all its particulars, then can it be said, that while the time at which the work is to be completed is included within the defendants covenant, the condition to pay the £4 per week is not? I cannot help saying that in my opinion the clearly expressed meaning and intention of these parties is to include the whole. Not content with referring to the plans and specifications thereto annexed, as the guide for the performance of the *work*, they refer to the fact that the plaintiff and defendant have signed and sealed them on the same day that the contract itself bears date, and the signing and sealing being at the foot of all that is annexed to the contract, shews as I think that by the term "*specifications*" they included everything to which their hands and seals were annexed, and which were annexed to the contract.

I think therefore on these facts the case comes fully within the principle of the cases of *Great Northern Railway* v. *Harrison*, 12, C. B. 576, and of *Knight* v. *The Gravesend Waterworks Company*, 2 H. & N. 6.

Indeed I am not satisfied though I do not rest upon this, that if a count had been framed upon this annexed instrument alone, executed as it is, under the hands and seals of the two parties, the plaintiff would not have been entitled to recover upon it as importing a covenant in itself, distinct from the articles of agreement, though relating to the same subject matter. Or, it is open to consideration, whether we might, not as regards the plaintiff and defendant look at both instruments as together making one contract, in which case the plaintiff's right to recover would be undeniable. This however is only another form of stating the argument first relied upon, as to the incorporation of the whole of the paper annexed.

The Court of Queens' Bench have we understand during the present term given judgment in an action brought by this plaintiff against the surety for the same breach, that in not paying the £4 per week. Possibly among other reasons why the surety should not be held liable, it may have been considered that as regards him the right of the plaintiff to retain from the last payment to be made to the defendant, might be considered as one of the securities, which the surety had a right to look for his protection, and that the surety had an equitable if not a legal right to treat the fact that the plaintiff made the payment in full, without deducting the £4 per week on account of the non-completion of the contract by the stipulated time, as a bar to his enforcing the demand against the surety, or the decision may have turned entirely upon the manner on which the right of action against the surety was presented upon the pleadings. However this may be, I do not see any sufficient ground on which we can hold that the plaintiff has not a right to recover against the defendant. I think the defendant is proved to have covenanted to complete the work by the 1st day of September next after the date of the contract, or to pay £4 per week for each week after that date that the work should be unfinished as liquidated damages.

In my opinion therefore the rule should be discharged.

*Per Cur.* Rule discharged.

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## CHAMBERS.

### DELISLE v. LEGRAND ET AL.

*(Reported by* ROBERT A. HARRISON, Esq., *Barrister-at-Law.)*

*Arrest—Cause of action—Intention to quit Canada—Setting aside.*

*Semble*—A defendant arrested may dispute either the cause of action, or other matters which the plaintiff's affidavit to arrest contains; but, unless in a very clear case that the plaintiff had no cause of action, the court will decline to interfere.

The affidavit of the plaintiff in this case was sustained as against the objections taken to it.

December, 1859.

This was summons to set aside the order of the county judge of the County of Essex for Defendants' arrest, and the writ of capias with costs, and to *discharge defendants from custody*, on the ground that the affidavit to hold to bail was insufficient: inasmuch as plaintiff had no cause of action to the amount of twenty-five pounds, and the facts and circumstances to satisfy the judge that there was good and probable cause to believe the defendants, unless forthwith apprehended, were about to leave Canada with intent to defraud Plaintiff, were untrue.

The affidavit of the plaintiff, sworn to on the twenty-fourth of October, 1859, upon which the judge of the county court made an order that the defendants should be held to bail in the sum of two hundred and forty-five dollars, twenty-five cents, stated that the defendants were indebted to him in that sum, upon a promissory note, overdue, made by the defendants on the twenty-first day of August, 1857, by which they promised to pay to the plaintiff's order the said sum, twelve months after date, without interest: that defendant, Legrand, four weeks before the date of the affidavit, told plaintiff that he meant to go to France to get money, and pay his debts on his return; that plaintiff was informed that morning by one Gilbert Brisbois and others, that both defendants were preparing to leave Canada; that the family of the father of defendant, Rabidon, of which he is a member, had gone to the State of Michigan, and that on enquiry he was informed both defendants were to follow the family, Legand being married to a sister of Rabidon; that he believed the facts true, and that unless defendants were arrested, he would lose his debt, it being their desire, as he believed, to quit Canada with intent to defraud him of the debt.

The defendants both swore, they believed the action had been brought on a joint promissory note given by them to one Brussie, the plaintiff and one Morrin being endorsers as sureties for money lent to the defendants by Brussie: that they had no intention of quitting the Province. Rabidon swore he believed his arrest was caused through ill-feeling on the part of the plaintiff, and Legrand swore that he believed plaintiff was merely acting as agent for Brussie, as, the day after making his affidavit, the plaintiff asked him for seven dollars to pay Brussie the interest on the note, as Brussie wanted the same; that three months before, plaintiff had acquiesced in his, Legrand, going to France.

Paul Rabidon, a brother of one of the defendants, swore to his belief that neither defendants meant to leave the Province. The defendant, Charles Rabidon, and his brother made a second affidavit of a conversation with Brussie: that he held the note mentioned in the defendants' first affidavit.

Gilbert Boisbois made an affidavit denying the truth of the statement relative to him, contained in the plaintiff's affidavit; that he believed the action was brought on a promissory note given by the defendants to one Brussie, the same having been endorsed by plaintiff; that he believed plaintiff was only acting as agent for Brussie, as plaintiff told him after the arrest of the defendants, that his furniture would be sold to pay that note to Brussie, unless he did something to justify himself.

In answer the plaintiff put in affidavits. He swore that the promissory note in question was redeemed by him before this action was brought; that he was not acting as the agent of any one in the matter; that before commencing the action, James Harken, De la Forrest, and others informed him, that defendants were about to leave the Province.

Emanuel Boisee swore that the note in question was endorsed by the plaintiff, and was in his hands, but that before the commencement of this suit the plaintiff paid him the amount, and took the note back. Antoine P. Reaume swore that defendant, Rabidon, about a month ago, told him he was going to follow his family, who were gone, or then immediately going to the United States. James Revill swore; that about eighteen months ago, plaintiff and defendant, Legrand, gave him instructions to draw a chattel mortgage, to secure to plaintiff payment of a promissory note, which he believed to be the one in question; that he did prepare a chattel mortgage, but Legrand did not execute it.

James Harkin swore; that about two weeks before the issuing of the capias, he heard from various persons that defendants were going away, and told plaintiff of it.

John Williams made an affidavit to nearly the same effect.