

C. P. Div.]

NOTES OF CASES.

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a principal debtor to a portion of the debt, and set up as a defence in substance that he could not be called upon to pay until and unless the creditor executed a proper release, not only of the money then paid, but of anything else arising out of the claim.

*Held*, clearly no defence.

*Guthrie*, Q.C., for the plaintiff.

*Macdonald* (of Guelph), for the defendant.

COURT V. SCOTT.

*Foreign judgment—Cause of action—22 Vict., ch. 5, sec. 58—Defence on merits—Jurisdiction.*

Under 22 Vict., ch. 5, sec. 58, consolidated in C. S. L. C., ch. 83, sec. 65, sub-sec. 2, a judgment may be recovered in the Province of Quebec, on a personal service in Ontario in a suit or action, in which the cause of such suit or action arose in Quebec, so as to render such judgment conclusive on its merits.

A note made in Ontario, payable at a particular place in Quebec, is a contract deemed to be made in Quebec, the place of performance, and under C. S. C., ch. 57, sec. 4, is payable at the particular place named, the C. S. U. C. ch. 42, requiring the use of the restrictive words, nor otherwise or elsewhere, applying only to notes made and payable in Ontario.

The note in this case was made in Toronto, payable at the Mechanics' Bank, Montreal, and was sent to Montreal and there held until maturity, when it was presented for payment and payment refused.

*Held*, that the contract being performable in Quebec and the breach occurring there, the cause of action arose there, so as to bring the defendant under the operation of the 22 Vict., ch. 5, sec. 58, and to make a judgment recovered against him in Quebec, on a personal service in Ontario, conclusive on its merits.

In an action brought here on such judgment, the defendant was held precluded from setting up any defence on its merits, the only defence allowed being one in the jurisdiction of the Court.

*Semble*, that personal service referred to in R. S. O., ch. 50, sec. 145, refers to personal service in the Province of Quebec.

*MacLennan*, Q.C., and *Langton*, for the plaintiff.

*Snelling*, for the defendant.

MERCHANTS BANK V. CAMPBELL.

*Execution against lands—Sale—Sheriff's fees—Poundage.*

*Held*, (WILSON, C. J., dissenting.) that a sheriff has no right to poundage upon an execution against lands, unless there has been an actual sale.

*Bethune*, Q.C., and *Allan Cassels*, for the sheriff.

*Walter Read*, contra.

GREAT WESTERN RAILWAY CO. V. LUTZ.

*Ejectment—Proof of title—Possession—Evidence.*

Where land was taken by the Great Western Railway Company, for the purpose of the railway, under the Act 9 Vict., ch. 81, sec. 30, and 16 Vict., ch. 99, the company, in ejectment brought by them, can rely on the title acquired thereby, and are not driven to prove a strict legal right by conveyance from the patentees to the grantors.

In this case the defendant set up a title by possession, but his evidence failed to establish it.

*Robinson*, Q.C., for the plaintiffs.

*Ewart and Campbell*, for the defendant.

DUNBAR V. MEEK.

*Sale of land—False and fraudulent representation—Adding parties.*

Action for a false and fraudulent representation as to the boundary of certain land on the sale thereof, and for a rescission of the sale, and for an account for improvements, and for damages. It appeared that by partition between the defendant and his brother of a village lot acquired from their father, the defendant got the west half on which an hotel was erected, and the brother the east half, on which a store was erected, each believing that the division line between the two halves ran between the two