" numbered from 1145 to 1154, and declare the " existing law."

If I have understood the meaning of the French writers cited by respondent, it is this: that article 1153 C. N. limits the damages arising from the delay to pay money, to legal interest only when the obligation is limited to the payment of money, but that when the payment of money is portion of another substantive contract, then all the damages resulting indirectly from the delay can be exacted. This is ingenious but very forced, and it is absolutely inadmissible under the *redaction* of our article 1077. The opportunity of setting the legal mind astray on this question arises from the weakly pedantic and false doctrine of Article 1053 C. C. which is obviously incompatible with Articles 1074 and 1075 C. C. It is borrowed with variations from Arts. 1182 and 1183 C.-N., which in their turn are even more forcibly in contradiction with Arts. 1150 and 1151 C. N. Whatever may be the origin of the idea which was expressed by the application of the three degrees of comparison to *culpa*, we have the advantage of knowing that 1053 C. C. was adopted to substitute a new basis for damages, under guise of re-asserting the true principles of law. 1st Rep. p. 18. How far the omission of the square brackets is justifiable it is not necessary now to enquire.

I am therefore of opinion that the failure to pay money at the proper time can only give rise to the immediate and direct damages resulting therefrom, and which are limited by law to the legal interest on the sum.

But the next question is whether the obligation to give debentures bearing interest at 6 p. c. is an obligation to pay money? Strictly speaking it is not, and I think we can hardly say it is an equivalent, as when commercial paper is given. Now the rule of Art. 1077 is one of positive law, and an exception to the general rule of Article 1073 C. C. If Art. 1073 had stood alone, and without Art. 1077, damages for the delay to pay money would have been the loss the creditor has sustained. I am therefore to confirm. I think these remarks dispose of the whole argument as presented at the bar, but a new view is presented by the dissent, which it becomes important to consider in order that it may not be supposed we have overlooked it.

Before doing so I would however remark that reference was made to what I said in *Ansell & The Bank of Toronto;* but it will be remembered that the judgment went on the merits, and that I only put as a query whether that case was not within Article 1077 as being equivalent to the payment of money.

I understand the argument of the learned Chief Justice to be this:

The damages sought to be recovered are specially for loss of credit, loss of prospective gains and interest, that on such a declaration no general damages could be given, not even nominal damages, that there was no such thing as nominal damages in the French Law, that by that law all damages were real, and that the nominal damages of the English Law were a farthing or a shilling. It was further said that in England loose speculative opinions as to probable gains were considered as inconclusive and too remote. It was also said that there could be no damages by way of interest, for the action was taken out on the 19th June, and the *mise en demeure* to deliver the bonds was only on the 19th January, so that interest on the bonds was not due till July.

I quite agree with the Chief Justice that if the Civil Code is to be taken as embracing all the principles of damages known to the French law these damages are not sustainable; but it is evident that the articles on damages are miserably insufficient. I do not see how any one who has read Pothier and the old authors on the subject, can arrive at the conclusion, that there were no nominal or exemplary damages under the old French law when positive proof of loss was impossible. At all events it is pretty late in the day to set up such a doctrine, for we have been giving exemplary damages, damages estimated by the Court and nominal damages, ever since I have known anything of the matter. I never heard the right questioned before, except by a once well known litigant who made it a charge against Judge Aylwin that he had given some small damages as recognitive of the right of action although no real damage was positively proved. I don't think the criticism produced much impression. If nominal damages can only be a farthing or a shilling then nominal damages for personal wrongs cannot carry costs (478 C. C. P.) If again these debentures are considered as money or equivalent to money, what has been allowed, $100, is far less than the interest on $112,000 from 17th January to 19th June. To say that interest *as damages*, could not be due because the interest on the debentures was not due till July appears to me as a fallacy. The interest on the debentures could never be due, because they never were issued. Our article only says that interest is the measure of damage for non-payment of money. It does not surely mean that the damage may not be asked for with the demand. It has also been said that if the judgment is good it is for too little. That is hardly a ground of appeal in the mouth of the party condemned. It seems to me that the judgment is highly equitable and just, and is perfectly in accordance with the law, and that is the opinion of the majority of the Court. The appeal will therefore be dismissed with costs.

DORION, C. J., and CROSS, J., dissented.

Judgment confirmed.

Laflamme, Huntington & Laflamme, for appellant.

DeBellefeuille & Bonin, for respondent.