

The action was against Martin, maker, and Parent, endorser of a note. Parent did not receive notice of protest for non-payment, but it was alleged that he had waived protest.

The evidence was that Parent had not waived protest and therefore was not liable.

PER CURIAM. The action here has been taken against Parent solely in order to withdraw the defendant Martin from his natural judge, and the ordinary rule which would allow Martin to be sued out of his own district (C. C. P. 38 Can.) does not apply; Gilbert, Procédure Civ. Art. 59, p. 65, No. 81, (Cod. Nap.)

Exception maintained.

Greenshields, McCorkill & Guerin, for plaintiff.

Philippe Roy, for defendant Martin.

SUPERIOR COURT.

MONTREAL, March 3, 1884.

Before LORANGER, J.

RICHER V. THE CITY OF MONTREAL.

Municipal Code, Art. 583—Carter licensed by municipality of his domicile.

1. *A carter domiciled in a municipality outside of the City of Montreal, and duly licensed as a carter by such municipality, is entitled under Art. 583 of the Municipal Code to convey goods from said municipality into the City of Montreal without having a license from the city.*
2. *Where the Corporation for the purpose of making a test case, caused a carter to be arrested and detained several hours, instead of proceeding by summons, damages to the extent of \$50 were allowed.*

This was an action of damages brought by a carter against the City of Montreal under the following circumstances:—The plaintiff was a carter, resident in St. Cunegonde, and licensed for that municipality under the provisions of Article 583 of the Municipal Code, but not licensed for the City of Montreal. He was in the employ of the Montreal Rolling Mills Company, and on the 17th of November, 1882, was engaged in carting from the works of the company in St. Cunegonde to their establishment in the city, when he was stopped by Police Officer Waterson and asked to exhibit his license. The plaintiff produced

his license for St. Cunegonde. The policeman threatened to arrest him, and returned to the station and made his report. A warrant was issued, and the plaintiff was arrested and taken to the Seigneurs street station. The object of the Chief of Police, as was admitted by himself, was to make a test case, in order to obtain a decision upon the question whether carters who live in a municipality outside of the city limits, and who are licensed as carters for such municipality, are entitled to convey goods into the city without having also a license as carters from the City of Montreal. There is an article of the Municipal Code which recognizes this right. It is as follows :

“Art. 583. Every carter or common carrier licensed as such in the local municipality in which he is domiciled, may convey any articles taken from such municipality, or any persons going therefrom, into any other municipality erected in virtue of any law whatsoever, without paying to such other municipality any municipal license or taxes by reason of such conveyance. He may also, without being bound to take out any other license, or to pay any other tax, convey within the local municipality wherein he is licensed, goods or persons coming from any other municipality erected under any law whatsoever.”

On the other hand, the Corporation of Montreal relied upon section 123, sub-section 61, of their charter, 37 Victoria, chapter 51, and by-law 133 founded thereon, which makes it obligatory upon carters to have a license from the city in order to carry goods in the city, and enacts a penalty for default to comply with the law. The case was tried before the Recorder, and Richer pleaded that the city by-law was *ultra vires*, and that his arrest was illegal, he having a right to carry goods in the city notwithstanding the by-law. The Recorder, however, maintained the validity of the arrest, and Richer was condemned to pay a fine or undergo a term of imprisonment. Richer then brought the case by *certiorari* before the Superior Court, where the conviction was quashed, the court maintaining the right of carters domiciled outside the city and licensed by their municipality, to cart goods into the city. Richer now brought an action of damages against the city, based