

and payable by him to the bank, the bank is bound to honor his checks, and liable to an action by him if it does not. When he owes the bank independent debts, already due and payable, the bank has the right to apply the balance of his general account to the satisfaction of any such debts." And, further: "When, by express agreement, or by a course of dealing between the depositor and the banker, a note or bond of the depositor is not included in the general account, any balance due from the banker to the depositor is not to be applied in satisfaction of such note or bond, even for the benefit of a surety thereon, except at the election of the banker." *Bodenham v. Purchas*, 2 B. & Ald. 39, 45; *Simpson v. Ingraham*, 2 B. & C. 65, amongst other cases, were cited.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, NOV. 29, 1879.

JOHNSON, RAINVILLE, PAPINEAU, JJ.

BROSSEAU V. CREVIER.

[From S. C. Montreal.

Capias—Bail under 825 C.P.—Order to the defendant to surrender.—*The cessio bonorum.*

The judgment under Review was rendered by the Superior Court, Montreal, Mackay, J., 20 June, 1879, as follows:—

"The Court having heard the parties by their counsel upon the plaintiff's motion filed on the 9th of June instant, that inasmuch as under a writ of *capias ad respondendum* issued out of this Court in this cause against the defendant, the said defendant was arrested and taken into custody, and afterwards, while in custody of the sheriff of this district, Edouard Dorion, post office clerk, and Alfred Boisseau, gentleman, both of the city of Montreal, did on the 16th of May, 1878, severally enter into a bond towards the said sheriff to the effect that he, the said defendant, would surrender himself into the hands of the said sheriff whenever required to do so by any order of the said Court, or any Judge thereof, within one month from the service of such order upon the said defendant, or upon his sureties, and that in default thereof they would pay the amount of the judgment in

principal, interest and costs; that a judgment was afterwards rendered in the said cause on the 19th of March, 1879, declaring the said writ of *capias* good and valid, and the judgment rendered in the Circuit Court of this District in favor of plaintiff against defendant on the 14th of April, 1877, to be binding, and declaring further the sum of \$69.65, to wit, \$49.25 amount of the said judgment, and \$20.40 for costs taxed thereon, to be still due to said plaintiff, with interest on \$49.25 from the 6th November, 1876, and condemning the defendant to pay the costs;—which judgment is in full force; and that inasmuch as the said defendant wholly failed to surrender himself as required by law, and, in fact, hath absconded from and left the Province of Quebec and Dominion of Canada, he be ordered to surrender himself; having examined the proceedings, and deliberated;

"Doth grant the said motion, in consequence, doth order the said Louis C. Crevier, the said defendant, to surrender himself into the hands of the sheriff of this District within one month from the service upon him or on his sureties of the present judgment and order, and in default whereof, proceedings shall be taken according to law to enforce the same."

JOHNSON, J. The question presented in this case is one of procedure; but it is also one of extreme importance as affecting the rights of persons arrested under writs of *capias*; and I am not aware that any case exactly in point has ever come up. The defendant arrested under a *capias ad respondendum* gave bail to the Sheriff on the 27th April, 1878, under article 828 of the Code of Procedure; and thereupon got his provisional discharge. On the 16th of May, after the return of the action, he gave bail under article 825. Judgment for the plaintiff supervened, and the *capias* was maintained. On the 9th of June, the plaintiff moved for an order upon the defendant to surrender himself to the Sheriff within one month of the service upon him or upon his sureties of the order to surrender. The plaintiff in his motion made a mistake which the Court below adopted in giving its order as asked for. He said that the bail given on the 16th of May was a bond towards the Sheriff; whereas it was no such thing; it was bail to the action under article 825, and the bond to the Sheriff was only provisional bail under article 828; but that is un-