

Action en reddition de compte — Defence—Res adjudicata — Judgment for account—Setting up in account item adjudicated upon.—One who opposes, to demand *en reddition de compte*, the defence that the right of plaintiff is subject to the preliminary reimbursement of a sum of money advanced, and who, upon trial, fails in this defence and is ordered to account, cannot, in rendering an account pursuant to the judgment, set up claim urged in the defence as a credit item in his account. Judgment having passed into *res adjudicata*, while simply declaring against the defence, without specially adjudging whether the claim is well or ill founded, is regarded as having virtually rejected it. *Huot v. Huot* (1903), 14 Que. K. B. 522.

Action en reddition de compte — Executors may have their account made up by an expert who has been accepted by all parties. The signature of the latter is sufficient to bind defendants, and the verification by affidavit of such account is equivalent to a signature.—2. The word "*nominativement*" in art. 567, C. P., is not essential, and it is sufficient that the account be rendered by one from whom it is due, and to the one who demands it.—3. Defendants ought to give the details of the account and not only general statements. *Bird v. Bird* (1909), 10 Que. P. R. 265.

Action for Agent's returns—Compromise—Subsequent discovery of error—Rectification—Prejudice.—P. was agent to manage the wharf property of W., and receive the rents and profits thereof, being paid by commission. When his agency terminated W. was unable to obtain account from him, and brought an action therefor, which was compromised by P. paying \$375, giving \$125 cash and a note for the balance, and receiving an assignment of all debts due to W. in respect to the wharf property during his agency, a list of which was prepared at the time. Shortly before the note became due P. discovered that on one of the accounts assigned to him \$100 had been paid, and demanded credit on his note for that sum. This W. refused, and in an action on the note P. asserted that the error avoided the compromise, and that the note was without consideration, or in the alternative that the note should be rectified:—*Held*, that, as it appeared that P.'s attorney had knowledge of the error before the compromise was effected, and as, by compromise, W. was prevented from going fully into the accounts and perhaps establishing a greater liability on the part of P., W. was entitled to recover the full amount of the note. *Peters v. Worrall*, 22 C. L. T. 198, 32 S. C. R. 52.

Action for—Company—Board of Directors—Onus—Particulars.—In an action *en reddition de comptes* brought by a company against their president, the onus is upon the defendant to establish his allegation that the plaintiffs' board of directors is incomplete. 2. The plaintiffs asked that in default of accounting the defendant should be adjudged to pay a certain sum which they alleged he had received by virtue of certain contracts:—*Held*, that they were not

obliged to state at what date and from what persons such sum had been received. *Temiscouata Riv. Co. v. Macdonald*, 3 Que. P. R. 462.

Action for—Ferguson, J., held, plaintiff entitled to an account of defendant's dealings with properties transferred to him as security for an endorsement. *Hull v. Allen* (1902), 1 O. W. R. 151, affirmed by D. C. *ib.* 782.

Action for—Neglect to file—Order.—A plaintiff, who sues upon an account without filing it, and whose declaration is in general terms, will be ordered upon motion of the defendant to file his account, and to serve a copy upon the defendant. *Lachine Rapids Co. v. Hemond*, 5 Que. P. R. 138.

Action for—Practice—Writ of summons—Indorsement — Necessity for statement of claim.—Where a writ of summons was indorsed, under O. 3, R. 7, with a claim for an accounting, the sole object of the suit being to obtain an account, the defendant appeared and demanded a statement of claim, which being refused, the defendant, after some lapse of time, moved to dismiss the action for want of prosecution. The motion was refused by the Judge, and the defendant appealed:—*Held*, that the intention of the Rules is to enable a party who is simply seeking an account to obtain it promptly and with little expense, and without pleadings, unless some preliminary question is interposed by defendant. Appeal dismissed. *Palmeter v. Palmeter*, 40 N. S. R. 190.

Action for — Previous demand — Costs.—Every action supposes a right in the plaintiff and the violation of that right by the defendant. In order that a man who has a right to an account from another shall have an action *en reddition de compte* against him, it is necessary for him to shew a demand refused by the defendant; and if he sues without having made a demand, and the defendant, when sued, produces his account, the action will be dismissed with costs as premature. *Chanteloup v. Fulton*, 16 Que. S. C. 387.

Action for—Service of account—Dilatory exception.—The failure to serve upon the defendant a detailed account at the same time as process in the action, is not ground for an exception to the form, but rather for a dilatory exception, such failure having only the effect of delaying the proceedings until the account has been served. *Dubrule v. Leclair*, 24 Que. S. C. 514.

Administrators' accounts. See EXECUTORS AND ADMINISTRATORS—PROBATE—SURROGATE COURT—WILLS.

Alternative condemnation to pay a sum of money in case of failure to account—Reduction of condemnation prayed for.—The plaintiff in an action to account who prays that, in the alternative of failure by the defendant to account, he be condemned to pay a specified sum, is entitled, on establishing the accountability of the defendant,