

If our law permitted the amount recovered to be expressed in the foreign currency, the amount recovered would be 2,000 francs, and the judgment would be satisfied by the payment of the equivalent of that sum in the currency of Canada, which would be determined on the basis of the prevailing rate of exchange; and the learned Chief Justice could see no reason why the same result should not follow when the amount recovered is to be expressed, as it must be, in the currency of Canada: Currency Act, R.S.C. 1906 ch. 25, sec. 4.

There is a conflict of judicial opinion and in the views of text-writers upon the question. Reference was made to Westlake's Private International Law, 5th ed., p. 315, para. 226; Mayne on Damages, 9th ed., p. 271; Story's Conflict of Laws, 8th ed., p. 425 et seq.; Scott v. Bevan (1831), 2 B. & Ad. 78; Lobeaupia v. Crispin, [1920] 2 K.B. 714, 720; and many other cases, including some in this Province, viz.: Judson v. Griffin (1863), 13 U.C.C.P. 350; Crawford v. Beard (1864), 14 U.C.C.P. 87; Morrell v. Ward (1864), 10 Gr. 231; White v. Baker (1864), 15 U.C.C.P. 292; Stephens v. Berry (1865), 15 U.C.C.P. 548; Massachusetts Hospital v. Provincial Insurance Co. (1866), 25 U.C.R. 613; Hooper v. Leslie (1868), 27 U.C.R. 295.

Reference was also made to secs. 136 and 163 of the Bills of Exchange Act, R.S.C. 1906 ch. 119.

The learned Chief Justice thought that the decision of the English Court of Appeal in *Di Ferdinando v. Simon*, [1920] 3 K.B. 409, affirming the decision of Roche, J., [1920] 2 K.B. 704, ought to be taken to be correct, and to be followed in a similar case by a Divisional Court in Ontario. But the respondent's claim was not for the recovery of unliquidated damages for breach of a contract; he was suing for a debt owing to him for services performed by him for the appellant, and the principle of the case last referred to was not applicable.

The learned Chief Justice's conclusion was, that the value of the 2,000 francs owed to the respondent, not being damages for breach of a contract, and not being money payable at a fixed time and place, must be determined according to the rate of exchange which prevailed when judgment was pronounced in the Court below; and that, with that variation, the judgment should be affirmed.

If the parties should be unable to agree as to what that rate was, the case might be spoken to before a member of the Court.

Each party should be left to bear his own costs of the appeal.

MACLAREN and FERGUSON, JJ.A., agreed with MEREDITH, C.J.O.

MAGEE, J.A., read a dissenting judgment.

*Judgment below varied (MAGEE, J.A., dissenting).*