

O'HALLORAN v. BARLOW.

*Dilatory exception—Action for money attached in hands of defendant.*

This was the merits of a dilatory exception. The plaintiff demanded \$25,000.

The defendant did not deny the debt, but pleaded that an attachment had been lodged in his hands for the same sum in another case to which the now plaintiff was party, and he prayed that all proceedings in this case be stayed until a decision on the merits of the other case.

The defendant cited C. C. P. 120, Sub-sec. 2 and 3.

TORRANCE, J. The pretension of the defendant, that the proceedings in this cause be stayed until a decision in the other case, is perfectly reasonable. The authorities cited by plaintiff do not touch the present case. It would be unreasonable here to condemn the defendant to pay the plaintiff the sum of \$25,000, when in the other case a contest is going on which may end in the now defendant being ordered to pay the sum to another party. The plaintiff is party to the other suit, and should have it settled first.

Exception maintained.

A. D. Taylor for plaintiff.

T. W. Ritchie, Q. C., for defendant.

JOHNSTON v. SCOTT et vir.

*Married woman—Authorization of wife by husband to make note.*

This was an action against a married woman *séparée de biens*, to recover \$320.55, alleged to be due on a note signed by her, and endorsed by her husband.

The plea was that she had not been authorized by her husband to sign the note—that she got no value, and that it was signed by her for a debt of her husband.

TORRANCE, J. The evidence of record is a note signed by the female defendant, endorsed by her husband, and a letter from her to the plaintiff, to the effect that in consideration of his discounting the note at 45 days, endorsed by her husband, she would hold in trust for plaintiff, until the note was retired, certain furniture. Attention is also called to the 13th interrogatory put to the female defendant, which she answers in the affirmative, to the effect that the object of obtaining said money, was the preservation

of certain real property which she had acquired and partially paid for, with the approbation of her husband, and which, without the making of a further payment on account thereof, she was in danger of losing.

The evidence by the husband for or against his wife is here of no value—C.C. 1231. The note and letter signed by the wife speak for themselves; and as to the authorization of the husband it is abundantly proved by his endorsement of the note. The formal express authority required by the custom of Paris is no longer necessary. C. C. 177 is clear, and the commissioners for the codification so intended. Judgment for plaintiff.

F. W. Terrill for plaintiff.

M. Hutchinson for defendant.

#### JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

April 15, 1880.

Present:—Sir JAMES W. COLVILLE, Sir BARNES PEACOCK, Sir MONTAGUE E. SMITH, Sir ROBERT P. COLLIER.

CUSHING, Appellant, & DUPUY, Respondent.

*Appeal to Privy Council—Power of the Crown to admit an appeal where the appeal is denied by Canadian Act—Sale without delivery.*

PER CURIAM. This appeal is from a judgment of the Court of Queen's Bench of the Province of Quebec, reversing the judgment of a Judge of the Superior Court, which had been given in the Appellant's favor, in certain proceedings in insolvency instituted under an Act of Parliament of the Dominion of Canada, intitled "An Act respecting Insolvency" (38 Vict., c. 16).

These proceedings were commenced by a petition of Mr. Cushing, the Appellant, to the Superior Court, praying that Mr. Dupuy, the official assignee of the estate of the insolvent firm of McLeod, McNaughten, and Leveillé, might be ordered to deliver up certain property seized by him, as such assignee, under a writ of attachment, on the ground that it had been sold to the petitioner by the insolvents before their insolvency.

An application to the Court of Queen's Bench for leave to appeal to Her Majesty in Council was refused, on the ground that, under the Insolvency Act, its judgment was final. The Appellant then presented a petition to Her Majesty for special leave to appeal, which Her Majesty was advised by their Lordships to