and in order to get time to pay, he induced his brother-in-law, Fortier, to give an obligation to Roy as if Fortier was Roy's personal debtor. Subsequently Dulac settled with Roy, how we cannot find out precisely, owing to the contradictory and confused mode in which Dulac tells the story; but, at any rate, he disinterested Roy, and then asked him to transfer Fortier's obligation to him. Dulac then transferred the obligation to Lepage, the respondent, who sued the appellant Roy. To this action Roy pleaded—1st, that Lepage should discuss Fortier before sueing him; 2nd, that the deed from Fortier was given to him as security for Dulac's debt, that it was by error he transferred it to Dulac, and that he got no value for it. Dulac admits the whole of this. He says it was a security deed only, and that he got it transferred by Roy "pour sauver ce que l'on appelle l'autre garantie de l'acte." What Mr. Dulac means by this mysterious phrase is that Fortier owed him, and that he had therefore a right to sue Fortier on the deed by which Fortier declared he owed Roy. He is then asked "vous saviez n'est-ce pas qu'il y avait un recours à exercer contre M. Roy pour le montant de ce transport qu'il vous faisait."

R. Contre M. Roy?

Q. Le défendeur en cette cause?

R. Je n'ai pas compris cela dans le temps.

Nevertheless he immediately transferred this obligation, *par délicatesse de famille*, to Lepage, who at once sued Roy. Under this evidence it appears indubitable that Dulac had no action at all against Roy, and that unless Lepage has greater rights than his vendor had to transfer, he could have no action against Roy.

Now as to Lepage's rights, we do not find it necessary to say whether a *bona fide* purchaser of a notarial obligation secured by hypothec cannot, in any case, recover against the debtor, who has paid, for that question does not arise here. Lepage bought an obligation which on the face of it was a sale of Roy's rights, if any he had, and specially without warranty. He therefore has no recourse against Roy who has not failed in the execution of his obligation. It is also to be remarked that the transfer does not identify the obligation except by the accidental coincidence of the amount transferred. If Lepage really obtained the transfer for value, his action, if any he has, is against Fortier.

The Court being of this opinion, it is hardly necessary to examine the exception of discussion, which would probably be good if it stood alone, but as it is followed by a denegation of indebtedness it ceases to be of any value. The appellant has, however, made a special argument based on the rule *qui excipit non fatetur*. This rule is perfectly true in its proper limits. An exception does not confess the conclusions of the action, it avoids them. Hence in English pleading it was called confession and avoidance. No authority has ever pretended that the issues were not or might not be limited by the disclosures of an exception. How far depends on the subject matter and the nature of the exception.

Judgment reversed.

COURT OF QUEEN'S BENCH.

QUEBEC, Oct. 8, 1885.

DORION, C.J., MONK, RAMSAY, CROSS, BABY, JJ.

DULAC, Appellant, & BOLDUC, Respondent.

Damages—Delay to pay money—Interest—C. C. 1077.

This was an action to recover money from the appellant which he had received to pay on account of respondent to Messrs. Chinic & Beaudet in Quebec. Two objections were raised to the action: 1st, that respondent had no right to bring the action; 2nd, that the amount was too great (*a*) in that respondent sought to recover more money than he had paid to appellant, (*b*) and a charge of ten *per centum*.

The Court was of opinion that the judgment as to the amount paid to appellant was correct, and that the ten *per centum* was due.

RAMSAY, J., thought that although the obligation to Chinic & Beaudet bore interest at the rate of ten per cent., the appellant, for failure to pay money, could not be charged with any greater damages than the legal rate of interest. Art. 1077, C.C.

Judgment confirmed.