

irregularity of protest or notice, must be specially pleaded and be supported by an affidavit. However, there is full proof that the protest was made and notice duly given, as appears by the evidence taken on the *commission rogatoire*, and by the protest filed before the Commissioner, and by the testimony of the indorser himself. But it was urged that the note was protested on the 3rd March, and that the last day of grace was the 4th, that by our law the note must be and ought to have been presented and protested on that last day. It was also urged that our law concerning this point ought to prevail, as the note was made in Canada. The rule, *locus regit actum*, properly carried out in all its bearings, will give a solution covering all interests with the same guarantees, but otherwise than pretended by defendant. As the note was made in Canada, everything concerning the mode or modality of the note itself must be governed by the law of Canada—*locus regit actum*. But if the payment is to be made in a foreign country, everything concerning the payment and the mode of securing it, must be made according to the law of the country where the note is payable. *Locus regit actum*. In the commentaries by Victor Fons upon legal maxims, we read the following lines:—"Les formalités probantes sont celles qui ont pour objet de constater le contrat, d'en faire la preuve écrite. C'est à cela que s'applique la maxime, *Locus regit actum*. Cela découle du principe adopté aujourd'hui par l'usage général, que la forme des actes est réglée par la loi du lieu dans lequel ils sont faits." Story, Conflict of Laws, No. 316, writes: "Nor is it any departure from the rule, that the law of the place of payment is to govern, to hold that the time when the payment of the bill is to accrue, is to be according to the law of the place where the bill is payable, so that the days of grace, if any, are to be allowed according to the law or custom where the bill is to be accepted or paid; for such is the appropriate construction of the contract, according to the rules of law, and the presumed intention of the parties." "Acceptances are deemed contracts of acceptance in the place where they are made and where they are to be performed." No. 361: "The rule as to the period of indulgence, called days of grace, is that the usage of the place in which the bill is drawn and where the payment of bill or note

is to be made, governs as to the number of days of grace to be allowed thereon."

The last day of grace for the maturity of the note in question was falling on a Sunday; the note was presented and protested on the Saturday. These performances done in the foreign country concerning the protest and notice are presumed to have been done according to the law of the land, unless impugned by affidavit, as required by Art. 145. Further, there is proof that everything was done according to the law of the State of New York, except as to the protest having been made on the Saturday. No question was put to the witnesses on this particular fact. As proof of the foreign law upon this point, plaintiff has cited Story on Promissory Notes (6 Ed., No. 220). "By the laws and custom of the United States, when the last day of grace falls on a Sunday, the note or bill must be presented for payment and protested for non-payment on the preceding day;" Other authorities could have been cited to the same effect, and I will only cite one from the Commentaries of Chancellor Kent, 3, page 102: "If the third day of grace falls on Sunday, the demand must be made on the day preceding. The usage is settled in commercial matters, that if payment falls on a Sunday, payment is to be made on Saturday." If the affidavit required by Art. 145 had been made, more positive evidence would perhaps have been necessitated than that offered, to explain the special law of the foreign country. The plaintiffs have proved their case, and the defendants have not justified their pleas. Judgment for plaintiffs.

*Dunlop & Lyman* for plaintiffs.

*Roy & Boutillier* for defendants.

#### SUPERIOR COURT.

MONTREAL, November 30, 1880.

Before JOHNSON, J.

CITY OF MONTREAL V. TRACEY.

*Assessment—Mode of questioning legality—"Necessary" and "Advisable."*

*Work was authorized to be done by the Corporation upon a report being made by the Road Committee that it was "necessary." Held, that a report that it was "advisable" was sufficient.*

PER CURIAM. The defendant is sued in the