

of the date of maturity of the payments to be made in virtue of the obligation contracted by defendant in making his subscription which appears to have been accepted *instante*;

"Considering for all these reasons that the proof made does not establish that the cause of action took its origin in the district of Montreal;

"Considering, moreover, that the defendant has not his domicile in the district of Montreal. and that the service of the defendant was not made in this district;

"Considering the said declinatory exception well founded, doth maintain it," etc.

Sir A. A. DORION, C. J. The appellants say that the stock was allotted by the directors here in Montreal. We think the whole cause of action did not arise here: part of the cause was the promise to pay which was given in the district of St. Francis.

Judgment confirmed.

*Davidson & Monk* for appellants.

*Ives, Brown & Merry* for respondents.

DONIHÉ (plff. below), Appellant, and MURPHY, (def. below), Respondent.

*Sale of horse—Vice redhibitoire—Delay within which action must be instituted.*

The appeal was from a judgment of the Circuit Court, Huntingdon, Belanger, J., dismissing the appellant's action.

On the 5th May, 1876, appellant bought a horse from respondent for \$100. On the 9th May, he took the horse home. On the 26th May, 17 days after, he brought the present action, alleging that the horse was a "cribber and wind sucker," and asking that the respondent should be ordered to return the money and pay damages.

The judgment appealed from was in these terms:

"The Court, etc.

"Considering that before putting in force of our Civil Code, the redhibitory and *quanti minoris* actions resulting from sales of horses in this Province, had to be instituted, according to the custom of Paris and the jurisprudence, within the delay of nine days from the delivery of the animal, such delay being then considered reasonable and sufficient;

"Considering that our Civil Code, by declaring that such actions must be instituted

with reasonable diligence, without fixing any specific delay within which they must be issued, is not to be presumed to have changed the delay of nine days provided for in and by the custom of Paris and adopted by the jurisprudence, and that there is no reason to suppose unless there is positive proof to the contrary, that such delay is no more reasonable or sufficient;

"Considering that the present action has been instituted long after the nine days following the delivery of the horse sold by defendant to plaintiff, viz.: not less than seventeen days after said delivery, and that plaintiff does not show any reasonable impossibility for him to institute his said action within the said delay of nine days, it being alleged by himself that he had discovered the pretended defect within two days after said delivery;

"Considering that under the circumstances the plaintiff ought to have instituted his said action within the said delay of nine days from said delivery of said horse, and that after said delay he was debarred from such right of action. doth dismiss said action with costs," etc.

Sir A. A. DORION, C. J. We think that in order to annul sales on account of latent defects, the action should be brought within a reasonable delay. We do not say that the expiration of nine days is fatal, but that the purchaser must use reasonable diligence, and that seventeen days was, under the circumstances, too long for the appellant to wait before bringing his action.

RAMSAY, J. Neither the case of *Lanthier & Champagne*, nor that of *Poupart & Veronneau*, lay down the nine days rule as explicitly as the Judge in the Court below has done. Nor am I prepared to say that in all cases I should be bound by the rule of nine days; but it is a matter of discretion for the Judge to say whether proper diligence has been used, and unless it appears that the discretion has been exercised in an objectionable manner, I would not interfere with the judgment. I don't think there is any reason for plaintiff not having proceeded within the nine days, and I would reject the appeal, amending the motive of judgment, so as not to be held to adopt the nine days rule in every case.

Judgment confirmed.

*Archibald & McCormick* for appellant.

*Trenholme & Maclaren* for respondent.