We see, however, that both parties have concurred in this confusion. The defendant did not plead right, and so he cannot complain if there was judgment against him on the merits. On the other hand, we cannot say that the plaintiff has a right of action under the circumstances; therefore, we reverse the judgment, and dismiss the action, as well as the inscription in review, each party paying his own costs in both Courts.

Augé & Co. for plaintiff.

Archambault & Co. for defendant.

SUPERIOR COURT.

MONTREAL, April 30, 1880.

THE ROYAL CANADIAN INSURANCE CO. v. THE MONTREAL WAREHOUSING CO.

Interest—Corporation—Loan.

The local legislature may give local corporations authority to borrow money at any rate of interest already legalized as to other persons having the right to borrow.

Corporations other than banks, incorporated after 16th Aug. 1858, *may validly lend at any stipulated rate of interest.*

JOHNSON, J. The present action is to recover the amount of twenty-five *coupons* or interest warrants attached to the bonds issued by the defendants' company.

The declaration alleges that the defendants duly signed, sealed and issued the bonds on the 1st October, 1874, under the authority of the Act of the Province, 37 Vic., c. 57, and they were payable in thirtv years, with interest in the interval at the rate of seven per cent. per annum, semi-annually on the 1st of April and the 1st of October: That the plaintiff is the lawful holder of twenty-five of these bonds, and £7 sterling became due on each of them for six months' interest on the 1st of April last, and presentation was made at the place of payment, and the whole amount of interest on the 25 *coupons* is £175 sterling. The conclusion is for the equivalent of that sum in currency, with interest from the date of process, and costs.

The first plea of the defendants is that the plaintiffs are a corporation, and cannot by law take more than 6 per cent. for the advance or forbearance of money for a year; and the bonds in question were corruptly and usuriously issued upon a contract between plaintiffs and defendants to take 7 per cent. That the Provincial Statute 37 Vic., c. 57, was beyond the powers of the Quebec legislature, and could give no authority to the defendants to agree to pay a higher rate of interest than 6 per cent; the making of laws respecting interest being a power specially reserved to the Parliament of Canada; and therefore the coupons are of no value, and void, and no action can be maintained on them.

By a second plea, the defendants say, after repeating the absence of power by the Provincial Legislature to pass the 37th Vict., c. 57 that the bonds are void for any excess of interest over six per cent; but that nevertheless, ever since they were issued, the defendants have been paying, and the plaintiffs have been taking this excess, amounting now to a larger sum than is asked by the action, and which the defendants have a right to set off against the sum demanded.

The answers are general. Therefore, there would appear by the pleadings to be three questions: 1st, whether the acquiring of these bonds by the plaintiffs is to be considered as a loan of money by them to the defendants; 2nd, if it is so considered, whether it is void for usury either in the taking, or in the giving more than 6 per cent. (for both points are raised); and 3rd, whether the Act gives legal power to make the contract that has been made between these parties. This is the order in which the pleadings present these questions; but I think it is obvious that the last must come first, for if the contract in its present form has the express sanction of the Legislature acting within its powers, it would be quite superfluous to enquire whether, without the Act 37 Vic., c. 57, the transaction ought to have been looked on as a loan, or whether it would have been void entirely for usury, or only for the excess paid over 6 per cent., or for anything else that might have happened if the Act had not been passed. In a word, if by law it is a valid contract, it must be enforced, so that question would appear not only to be first in point of order, but first and last, and decisive of the whole case, if it should be found for the plaintiffs.

The 37 Vic., c. 57 (Quebec) is in these terms: "Whereas the Montreal Warehousing Company