defendant in defending a suit maliciously prosecuted without reasonable or probable cause exceed the costs obtained by him, he has and of right should have a remedy by action on the case."

It seems that the doctrine of the principal case is heavily overborne by the weight of modern authority.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 19, 1883.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.

PANGMAN, Appellant, and BUCHANAN, Respondent.

Procedure—Contestation of report of distribution—Security in Appeal.

On an appeal from a judgment dismissing the contestation of a report of distribution, the contestant is obliged to give security for costs only.

The appellant, creditor collocated, contested the privilege of the respondent, another collocated creditor. The contestation was dismissed in the Court below. He now appealed and gave security for costs only, fixed by the prothonotary at $150.

The respondent moved to reject the appeal, because the security was insufficient.

The COURT dismissed the motion, but without costs, because the word damages had been struck out of the security bond.

De Bellefeuille & Bonin for appellant.

Archambault & Archambault for respondent.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

JOHNSON, TORRANCE, RAINVILLE, JJ.

DESROSIERS v. THE MONTREAL, PORTLAND & BOSTON RY. CO.

Coupons of Railway Bonds—Interest.

Interest runs on the interest coupons of railway debentures from the dates on which they respectively fall due, without the necessity of putting the debtor en demeure.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Doherty, J., July 5, 1883.

JOHNSON, J. The only question here (and a sufficiently important one) is whether the coupons, representing interest on certain railway debentures—themselves bear interest without a demand for payment. Judgment was given for the amount of the coupons, but without interest, and it is the latter part of this judgment, refusing the $513 interest accrued since the coupons became due, that is now before us. It is said for the defendant that the coupons themselves represent interest on the bonds. That may be; but they are nevertheless, each of them, a negotiable instrument payable on a certain day which has elapsed; and there can be no doubt as to our own law applicable to such facts. Art. 1069 C. C. puts the debtor *in mora* by the sole expiration of the term of payment; and if he had any defence to make, it could only be, under Art. 2323, by showing that he had the funds ready. I am told that two cases have already been decided in this sense by this Court; but I am not acquainted with them. Daniel on Negotiable Instruments, Vol. 2, Nos. 1490, 1493, 1500, 1505, 1513, and 1514, cited at the bar, place the matter beyond doubt, and the error of the judgment complained of arose from taking the text of a digest as law, while the cases relied on in the digest were the other way. We therefore reverse the latter part of this judgment, and allow the interest since the date of the maturity of these instruments.

Judgment reversed.

Béique & Co., for plaintiff.

Lonergan, for defendant.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

TORRANCE, DOHERTY & RAINVILLE, JJ.

MCDONALD v. DILLON.

Prescription—Loan—Evidence.

The five years' prescription does not apply to a loan not of a commercial nature. If the bon or note given in acknowledgment of such loan be prescribed, it cannot serve as proof of the debt, but the claim may nevertheless be established by other evidence.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Taschereau, J., Sept. 7, 1883, (6 Legal News, p. 291).

TORRANCE, J. This is an action to recover a loan of $100 made to the defendant in 1867.