REPORTS AND NOTES OF CASES.

SUPERIOR COURT.

Montreal, June 28, 1878.

JOHNSON, J.

FISHER et al. v. MCKNIGHT et al.

Jurisdiction—Pleading.

A plea which invokes want of jurisdiction *ratione loci*, must be pleaded by declinatory exception; and the Court therefore refused on the merits to take notice of a plea that the note sued on had been endorsed by an employee of plaintiff merely to give the Court an improper jurisdiction.

JOHNSON, J. The plaintiff sues McKnight and Hoggard on a note made by Alger to McKnight's order, and endorsed by McKnight to Hoggard, and by Hoggard to the plaintiff. This is the recital of the declaration. The plea is that Hoggard never received the note by endorsement from McKnight, but is an employee in the plaintiff's office in Montreal, and only put his name on it here to give the Court an improper jurisdiction over McKnight, who lives in Quebec. This is strictly a question of jurisdiction, and should have been pleaded as such, jurisdiction *ratione loci* merely, and which I cannot take notice of now that the party has accepted jurisdiction by pleading to the merits. The plaintiff moves to strike out the endorsers' names appearing after Hoggard's, the late Judge Dorion having declined to give judgment for the plaintiff while these endorsements remained. I hold that I must grant the plaintiff's motion and give judgment for the plaintiff against both endorsers, who are sued. Art. 2289 recognizes the plaintiff's right to do this. It refers to Roscoe and to Story, on bills, and to Kent's commentaries. I regard this article as declaratory of the English commercial law in this respect, and the motion has the effect of changing the demand or the form in which it is made *pro tanto*. In England this is done every day at the trial; and in this particular case there could be no need of a motion to amend the declaration so as to accord with the proof, because it claimed through McKnight's and Hoggard's endorsements only, and not through the subsequent ones.

On the point of jurisdiction I may add, that in June, 1874, in a case, or rather series of cases, of *Ford et al* v. *Auger et al.*, all of which were put before me at one hearing, I went very fully into the point of the effect of collusive service to give jurisdiction. There, however, there was a declinatory exception, and though it was dismissed for want of evidence to support it, the rule I followed was that where the want of jurisdiction is invoked *ratione materiæ*, the Court can take notice of it on the merits; but where it rests on the *ratio loci*, or *ratio personæ*, it must be expressly pleaded by declinatory exception.

Macmaster & Co. for plaintiff.

Lunn & Co. for defendant.

DORION v. BENOIT.

Place of Payment—Demand before suit.

Where a person made a note *en brevet* payable at his domicile, *held*, that the creditor was bound to make demand of payment at the place specified, and an application by the debtor for an extension of time was not a waiver of his right to pay at such place.

JOHNSON, J. The action was to recover the amount of a note *en brevet* with interest from 1st October and costs of suit. The note was payable in the course of September at the defendant's domicile at St. Bruno, the plaintiff residing at St. Eustache. The declaration alleged no demand of payment at the stipulated place; but it alleged that when the note came due, the money was not there. The defendant pleaded that he had had the money ready at the time and place stipulated, and no demand or presentation had been made; but he confessed judgment for the principal sum without interest or costs—which was not accepted by the plaintiff, and the case is now up for judgment, the money having been taken under an interlocutory order reserving the questions of interest and costs only. It was said that this *billet* was not stamped, but the plaintiff has got the money and is no longer interested in that—his only rights being those reserved as the condition on which he got it. From the evidence, the defendant wrote on the 8th October in answer to a lawyer's letter and asked the plaintiff for delay. This could not relieve the creditor from the antecedent obligation of asking payment at the place stipulated, and it was no admission that the money was not there at the time agreed. There is evidence on the contrary, that the money was there at the right time. It must be observed that this is not a commercial matter. The defendant is a farmer