

SUPERIOR COURT.

MONTREAL, Sept. 6, 1880.

TORRANCE, J.

D'EXTRAS V. PERRAULT *es qual. et al.*

Security for costs—Motion for, against a plaintiff who has left the Province will not be granted unless made with diligence after knowledge of the fact.

A motion was made by the defendants for security for costs, on the ground that since the institution of the action plaintiff had left the Province.

The motion was dated and served on the 5th July, for presentation on the 1st September following.

The affidavit in support was made by one of the defendants on the 21st June previously.

The Court held, that, it being evident that defendant had knowledge of the departure of plaintiff on the 21st June, and having only given notice of his motion on the 5th July for the 1st September following, the diligence required by law had not been used, and the motion must be rejected.

Motion rejected.

Maclaren & Leet for plaintiff.*J. O. Turgeon* for defendant.

SUPERIOR COURT.

[In Chambers.]

MONTREAL, August 30, 1880.

DOTY V. WALSH.

Capias—Affidavit—Departure from Province of Canada—An allegation that defendant is immediately about to leave the "Province of Quebec," is insufficient under C.C.P. 798.

The defendant, mate of the sea-going steamship Prince Edward, was arrested on a writ of *capias ad respondendum*. The plaintiff's claim was based on verbal insults alleged to have been offered by the defendant.

The affidavit set forth the following facts:

1. That defendant was mate of a ship shortly to leave port.
2. The usual allegations as to indebtedness.
3. That defendant was about immediately to leave the *Province of Quebec with intent, &c.*
4. That plaintiff, deponent, had been informed of these facts by one Donelle, one St. Pierre, and several others.

McGibbon, for defendant, petitioned to quash, for the following reasons, *inter alia*:

1. There was no allegation that defendant was about to leave the limits comprised by the heretofore *Province of Canada*, as required by C. C. Art. 798.

2. The names of the deponent's informants were not sufficiently set forth, only their surnames being given, and no addresses; *Cameron v. Brega*, 10 L. C. J. 88.

Pelletier, contra.

PAPINEAU, J., delivered judgment, quashing the *capias*. The judgment reads as follows:

"Considérant que le demandeur, déposant, ne dit pas dans son affidavit que le défendeur est sur le point de laisser immédiatement le territoire comprenant la ci-devant Province de Canada;

"Considérant que le dit demandeur déposant ne désigne pas suffisamment dans l'affidavit les personnes qui lui ont donné les informations sur lesquelles il se fonde pour faire son affidavit, et qu'il ne fait pas voir d'une manière suffisante qu'il ait eu connaissance des faits indépendamment de ces informations;

"Accorde partiellement la requête du défendeur," etc.

Ethier & Pelletier for plaintiff.*Kerr, Carter & McGibbon* for defendant.

RECENT ENGLISH DECISIONS.

Contract—Offer, when refused—Revocation.—
The defendant wrote to plaintiffs from London, asking whether they could get him an offer for his iron, and afterwards fixed a price for cash, and agreed to hold the offer open until the Monday following. On Monday morning the plaintiffs telegraphed to defendant inquiring whether he would give credit. Defendant sent no answer to the telegram, and, after its receipt, sold his iron, and sent word on Monday p. m. to plaintiffs that he had done so. On Monday afternoon, also, plaintiffs found a purchaser for the iron, and telegraphed that fact to the defendant. Defendant refused to deliver the iron, and plaintiffs brought action for non-delivery. Held, that the action could be maintained, and that, although defendant was at liberty to revoke his offer before the close of the day on Monday, such revocation was not effectual until it reached the plaintiffs. *Stevenson v. McLean*, L. R. 5 Q. B. Div. 346.