

under these circumstances is the business of the Court to be transacted? I am prepared now to give judgment in every case heard last term, not only here but at Quebec, but nothing is done. Under these circumstances, I have this day sent in my resignation, because I am satisfied that justice cannot be properly administered.

DUVAL, C. J. The practice which we are now called upon to overturn, is one which has been followed for half a century, and has received the express sanction of all the judges during that period. The Court cannot now depart from that practice. The motion must be rejected.

*Lefrenaye & Armstrong*, for the Appellants.  
*Piché*, for the Respondents.

## MONTHLY NOTES.

### COURT OF QUEEN'S BENCH.

#### APPEAL SIDE.

June 8.

DORION (defendant in the Court below) Appellant; and DOUTRE *ès qualité* (plaintiff in the Court below) Respondent.

#### *Surety—Signification of Transfer.*

This was an appeal from a judgment rendered by *Loranger, J.*, in the Superior Court on the 30th of September, 1864, and confirmed in the Court of Revision on the 22nd of January, 1865, by Smith and Berthelot, JJ., (*Monk, J.*, dissenting).

The facts of the case were as follows: On the 18th of January, 1860, Anne Aurélie Routier, by F. E. Dorion, her husband and attorney, made an obligation in favour of Pierre Doutre, advocate, for \$360, payable in sixty monthly payments of \$6 each, beginning from the 15th February, 1860, without interest, but in case three of said payments should not be paid at maturity, Pierre Doutre might demand the whole sum due. By the same deed, F. E. Dorion *ès qualité* transferred to Pierre Doutre the sum of \$400 as collateral security. This \$400 was due by one Richard under a transfer made to Anne Aurélie Routier by A. A. Dorion on the 31st December, 1859. On the same day, by a writing *sous seing privé*,

the defendant, V. P. W. Dorion, became security of Anne A. Routier for the payment by Richard of the \$400 transferred to Pierre Doutre. On the 23rd May, 1860, Richard settled with Anne A. Routier, instead of with the transferee. On the 8th of January, 1863, Mr. Joseph Doutre, the testamentary executor of Pierre Doutre, brought the present action against Anne A. Routier and V. P. W. Dorion for \$200, balance of the obligation of 18th January, 1860.

Anne Routier made default, but the appellant Dorion pleaded that he had not become security for the payment of the obligation sued on; the only engagement contracted by him was that Richard would pay the sum of \$400 transferred to Pierre Doutre; that the latter having neglected to signify his transfer, Richard had paid this sum to Anne A. Routier, on the 23rd May, 1860, and thus the plaintiff's suretyship terminated. The plaintiff answered that it was the duty of the appellant to signify the transfer.

Judgment was rendered by *Loranger, J.*, in the Circuit Court, on the 30th of September, 1864, maintaining the action against the surety. The reasons assigned were that the absence of signification of the transfer could not be invoked by V. P. W. Dorion. This judgment was confirmed by the Court of Revision on the 25th January, 1865, *Monk, J.*, dissenting. The defendant Dorion appealed.

DUVAL, C. J. The judgment must be reversed. We are all decidedly of opinion that it was for the creditor to signify the transfer. It has been said that this woman, Anne Routier, in receiving the money subsequently, has not done right. To this, it must be answered that the *caution* has nothing to do with that. The *considéranants* of the judgment are:

Considérant que feu Pierre Doutre, représenté par le demandeur en Cour de Circuit, a négligé de faire signifier le transport fait au dit Pierre Doutre par Anne A. Routier, de ses droits, actions et hypothèques contre Richard; qu'en conséquence de tel défaut de signification, le dit Pierre Doutre a, par sa faute et négligence, perdu son recours contre le dit Richard, et s'est par là mis dans l'impossibilité de céder ses droits et actions à l'appellant, V.