

The judgment of the Court was delivered by
FITZGERALD, J.:—The judgment in this suit, obtained against the defendant as an absent or absconding debtor, is sought to be set aside on the following grounds:—

1st. That the affidavit upon which the writ of attachment issued is insufficient.

2nd. That the defendant was not an absent or absconding debtor within the meaning of the Act of 1873, and amending Acts.

The 5th sec. of this Act requires that the party applying for the writ shall make affidavit “in the usual form for holding a party to bail.”

The affidavit made in this case discloses the fact that the promissory note sued on was made payable at “Free-town, P. E. Island” (the place where it was drawn), and concludes “and the said note has not been paid;”—without any averment of presentation.

This action is by the holder of the note against the maker.

It is contended that this affidavit discloses no cause of action, as a note payable at a particular place must be presented at the place named, before an action can be maintained on it.

Such a contention cannot be gainsaid unless sec. 183 of the Bills of Exchange Act, R. S. C. c. 119, alters the law in this respect.

It reads as follows:—

1st. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

2nd. In such case the maker is not discharged by the omission to present the note for payment on the day that it matures; but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the Court.

3rd. If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to make the maker liable.

This section has as yet received no authoritative interpretation, and for the first time is before this Court.

Jones v. England, 5 West. L. R. 83; Warren v. Symon-Kaye, 27 N. S. R. 340, and Merchants' Bank of Canada v.