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THE COURT OF QUEEN'S BENCH.

A number of years ago, the Appeal Terms of the Court of Queen's Bench in Montreal became totally inadequate to the business to be disposed of. At that time the quarterly Term lasted from the 1st to the 8th of the month, and the Judges were absolutely precluded from sitting longer, because the Term at Quebec commenced on the 10th. It was only after long and persevering agitation in the press that the simple method of reversing the terms was adopted, and, by placing the Quebec Term first, allowing the Montreal Term to be lengthened, from the 11th to the 22nd. This worked well for a time; but at the present moment, and, in fact, for some time back, a similar difficulty has recurred. The term from the 11th to the 22nd is insufficient to get through the business on hand, and although the Judges have power to prolong the terms, this avails nothing, because in March and September the sitting in appeal is followed closely by a criminal term, and in June and December the midsummer and Christmas holidays make the Court indisposed to protract its labors. A great many cases are thus left undisposed of each term, and now a list of 91 confronts the Court. Supposing that, on an average, one case were each day heard, the records and factums examined, and judgment rendered, the Court has enough work on hand for 91 week days, or nearly four months; and by that time there would be at least 50 new cases inscribed, which would occupy two months more. But as the Judges have no chance of giving six months to the work, the prospect of keeping up with current business is not bright. Various expedients have been suggested to remedy this state of things. Those who have read the suggestions of Mr. Justice Ramsay in this journal (p. 226) know that there exists an easy escape from the difficulty. But even if this simple system be not adopted, there is a temporary expedient which may be resorted to. The Quebec and Montreal Criminal Terms are, by some singular awkwardness, not held simultaneously, though the Judges presiding are not the same. Thus the whole bench of five Judges is prevented from sitting in appeal while one of their number is engaged either at Quebec or at Montreal in holding the Criminal Term. We would say, in the first place, let the Criminal Terms be held simultaneously, and half the difficulty disappears. But further, why is it more necessary that a Judge of the Queen's Bench should sit in Montreal and Quebec for the trial of a shoplifter than that he should sit for the trial of a horse thief in Richelieu or Iberville? Yet all the rural district criminal terms are held by Judges of the Superior Court. As a measure of temporary relief, at all events, the criminal terms at Quebec and Montreal might be entrusted to a Judge of the Superior Court or to a Judge *ad hoc*, and thus the arrears on the civil side, which have grown to be a thing of consequence, might be wholly swept away.

PROFESSIONAL REMUNERATION.

In connection with a claim of Mr. Joseph Doutre, Q.C., upon the Dominion Government, for services as counsel before the Fisheries Commission, some evidence that has attracted considerable attention has been given before the Exchequer Court at Ottawa. As reported in the *Globe* of Sept. 9, Mr. Doutre deposed that in the test case of *Angers* v. *The Queen Ins. Co.* he received $500 in fees, although he spent but two days in Court. In another case, in which he obtained a $12,000 verdict, he was three days in Court, and received $1,800 in fees besides the taxed costs. In the case of *Grant* v. *Beaudry*, known as the Orange trial, he was paid $10 per hour. Mr. F. X. Archambault, of Montreal, stated that in the case of *Wilson* v. *The Citizens' Ins. Co.* the amount claimed in the suit was $2,000, but he received $1,000 as a retainer, besides other fees. In the case of *Rolland* v. *The Citizens' Ins. Co.*, his retainer was $2,000. In three capias cases which were presented as one, and which lasted about a month, he received $2,800 altogether. In the criminal case of a woman charged with stealing some silks, he received a retainer of $1,500. This client was merely admitted to bail. To defend a criminal case, which would not occupy more than two days, he had received $2,000.

Evidence of this character seems to bear out rather strongly some remarks which we had

occasion to quote recently (p. 281) upon the difficulty of estimating the value of intellectual and professional services. Of course, we do not question Mr. Doutre's estimate of the value of his services, which, we believe, is limited to $50 per day. His case, in fact, differs from ordinary claims in one very important particular—that he was absolutely called away by the Crown from the scene of his professional labors for a long period of time. Such a case may not unfairly be assumed to have some analogy to a claim for damages, where a professional man has been rendered incompetent for work by an accident. In such case the ordinary earnings of the plaintiff are taken into consideration, and even his extraordinary earnings. In *Phillips* v. *London & South-Western Ry. Co.* (p. 214), for instance, where a physician in large practice was disabled by a railway accident, special fees received by him were allowed to be taken into account by the jury in estimating his claim. A lawyer who leaves his ordinary business and his home for several months together to attend to a special case is equitably entitled to at least as much as he would recover from a railway company if he had been disabled during the same period by an accident. But all this has no bearing upon the policy of permitting advocates who enter upon engagements without agreement, and without payment in advance, to prove the value of the services rendered, by evidence of fees which are certainly not matter of every-day experience.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

QUEBEC, Sept. 2, 1880.

A. A. DORION, C.J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

McCAFFREY, Appellant, & BRUNEAU, Respondent.

Appeal—Failure to give security within the time ordered.

The respondent moved to have it declared that appellant had lost his right of appeal, security not having been given within the time specified by the order.

The COURT granted the motion, as there was a question of costs on the application for leave to appeal.

Motion granted.

CORPORATION OF PRINCEVILLE, Appellant, & PAGAUD, Respondent.

Appeal—Foreclosure from pleading—Tender of plea on application for leave to plead.

The appellant had been foreclosed from pleading, and moved the Court below for leave to plead, without producing any plea or alleging the nature of the plea, or that there was a *bona fide* defence to the action. The Court below rejected the motion on the ground chiefly that no plea had been tendered.

The defendant having moved for leave to appeal,

The COURT was of opinion that the decision of the Court below was strictly correct, but as the action was for damages, it was intimated that, a proper plea being tendered, leave to plead should be granted.

Motion rejected.

WADLEIGH v. PAINCHAUD, NADEAU, Opposant, & WADLEIGH, Contestant.

Security for costs—The four day rule—C.C.P. 24.

The opposition was produced on the 25th June. The 29th was a Sunday. On the 30th June, plaintiff contesting gave notice that on the first day of term he would move for security for costs, the opposant being resident in the United States. The Court below granted the motion, and ordered security to be given. The opposant moved for leave to appeal.

The COURT refused leave, 1st. Because by Art. 24 C.C.P. the party seeking security was within the delay, if it applied to a case like this. 2nd. Because the four day rule only applies to proceedings which are signified to the opposite party.

Motion rejected.

LATULIPPE, Appellant, & BERNARD, Respondent.

Motion—Exhibit—Costs.

This was a motion for an order to the Prothonotary to send up an exhibit filed and not produced before the motion was served. Before the hearing the exhibit was returned, and the party moving asked to be allowed to withdraw his motion without costs.

The opposite party objected, and said he meant to move to reject the paper.

The majority of the COURT were of opinion that the party moving should be allowed to withdraw his motion and pay costs.

RAMSAY and CROSS, JJ., dissented, being of opinion that the decision should be suspended to give the other party time to move to reject the paper, or that the motion should be rejected without costs.

QUEBEC, Sept. 6, 1880.

DIONNE, Appellant, & ROSS, Respondent.

Appeal—One appeal from two judgments dismissing oppositions.

Dionne, the appellant, filed two oppositions, by one of which she claimed a share of the property seized, by one title; by the other opposition she claimed the remainder of the property by another title. The two cases were conducted separately, and two judgments intervened rejecting the appellant's oppositions.

The appellant took out one writ of appeal from both judgments.

The respondent moved to reject the appeal.

The COURT was of opinion that as no disadvantage to respondent had been shown, the motion should be dismissed, but without costs.

While this motion was under consideration, the respondent also moved that the appeal should be dismissed, because the reasons of appeal were not filed within the eight days prescribed by the Code.

The COURT rejected this motion with costs, and referred to Art. 1134 C.C.P.

QUEBEC, Sept. 6, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

REG. v. ISAAC KERR, ELIZABETH KERR, JOSEPH KERR & GEORGE KERR.

Criminal trial—Challenge.

The prisoner should challenge before the juror takes the book in his hand, but the Judge in his discretion may allow the challenge afterwards, before the oath is fully administered.

RAMSAY, J. The prisoners were indicted for assault with intent to murder, and were convicted. They moved in arrest of judgment, setting forth four grounds. The Court, without adjudicating on the motion, reserved four questions arising out of these grounds for the consideration of this Court, the first of which is thus set out:—

"Après m'être assuré par le constable que le livre avait été donné au jury, Richard Cloutier, et qu'il le tenait à la main pour être assermenté, j'ai décidé, sur l'autorité de Roscoe, No. 195, que la récusation (challenge) faite par le prisonnier, n'était plus en temps,—cette décision n'a cependant été donné qu'après que l'avocat des prisonniers eut déclaré qu'il n'avait aucune objection particulière contre le jury."

Shortly stated, then, the question submitted is whether the prisoner is too late to challenge before the oath is fully administered, or if his right terminates by the beginning of the ceremony, that is, by taking the book presented to him into his hand. The difficulty arises from the phraseology of the caution preceding the calling of the jurors to the trial as found in the English books:—"You must challenge them as they come to the book to be sworn, and before they are sworn, and you shall be heard." Now, it is pretended that under these words it is not the coming to the book that limits the right, but the swearing, that is, the whole swearing. In support of this, the authority of a recent work—Harris' Principles of the Criminal Law, p. 375—has been quoted. This writer says that the challenge is in time "before the juror has kissed the book." But this book is of very recent date, and its authority is not established, and no adjudicated case is cited in support of the opinion. On the other hand, the writers seem to be unanimous in holding that the challenge must be before the beginning to swear. Roscoe (212, ed. 9) says:—"There is no doubt that the time for the prisoner to challenge the polls is as each juryman comes to the book to be sworn; that is, after the juryman has been called for the purpose of being sworn, and before the oath has commenced. It seems that the formal delivery of the book into the hands of a juryman is the commencement of the oath." Archbold says:—"The challenge must be made before the book is given into the hands of the juror and the officer has recited the oath, and it comes too late afterwards, although made before the juror has kissed the book." (P & Ev. 167, 19 ed.)

Chitty says :—"The proper time for challenging is between the appearance and the swearing of the jurors." It was argued for the prisoner that Archbold's authority only goes so far as to say that the juror need not have kissed the book, but that the oath must have been recited by the clerk, and that Chitty does not decide the point at all, for he only says that the challenge must be between appearance and swearing. (Cr. Law, p. 545.) But when we come to the cases, we find that in the case of *Brandreth* (32 Howell, St. T., 770) that Mr. Justice Holroyd held that the juror must be challenged "before the book is presented to him." In the case of *Frost* (9 C. & P., p. 137) all the judges expressed the same opinion, but the challenge was held to be in time because the book had not been presented by the clerk. The case of *Giorgetti* does not contradict these cases, but it supports the doctrine that the challenge is too late, although the oath be not finished, and it is difficult to suppose that he is not too late after the administration of the oath commenced, but that he is too late before it is finished, as was remarked by Mr. Justice Williams in Frost's case. The time must be either before the beginning or after the conclusion. I may add that in Montreal the caution is :—"You must challenge them as they come to the book, and before they are sworn you will be heard," and not "and you will be heard." Therefore, according to our form and practice, the caution to the prisoner is unambiguous. He must challenge before the juror comes to the book, and if he does so before the administration of the oath he will be heard. The old Quebec form is :—"You must challenge them as they come to the book, and you shall be heard," omitting the useless words "and before they are sworn."

We are, therefore, of opinion that the learned Judge in the Court below was justified in refusing the challenge, although it appears that it was within his discretion to have allowed the challenge. See 4 F. & F., p. 553, note *a* to case of *Reg.* v. *Giorgetti*.

The other points reserved appear to suffer no difficulty. The Judge had quite a right, and it was a proper thing to do, to state why he would not withdraw the case from the consideration of the jury. It does not appear that the witness referred to did not place his right hand on the book, and even if he had not done so it would not establish that he was unsworn. The fourth and last point reserved was that certain evidence of plaintiff's general character was bad. We think this evidence was rightly excluded. We, therefore, reject the motion in arrest, and order the record to be returned to the Court below for such proceedings as may be required.

Conviction affirmed.

COURT OF QUEEN'S BENCH.

MONTREAL, June 15, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., TESSIER, J., CROSS, J.

HODGSON (deft. below), Appellant, and EVANS (plff. below), Respondent.

Lessor and lessee—Tacite reconduction.

The appeal was from the judgment of the Superior Court, Montreal, Rainville, J., January 31, 1879.

RAMSAY, J. The appellant got possession of respondent's house as sub-tenant of one Smillie, whose lease terminated on the 1st May, 1876. In the meantime, on the 2nd Feb., 1876, he wrote to the owner, respondent in the present case, offering to take the house at $500 a year for three years, on condition of the owner making certain repairs. This letter was not formally accepted, but the appellant stayed on until May, 1878, when he gave up the house. The respondent would not take it off his hands, and he finally sued the appellant for a quarter's rent, due 1st Aug., 1878. The appellant pretended that the house was unfit for habitation from the badness of the drainage, and that he was not a tenant under lease for three years, but that he held by *tacite reconduction* under the lease to Smillie. It is not proved that the house was uninhabitable from bad drainage, and it is evident that the appellant did not hold by *tacite reconduction*, because he paid $100 a year less rent after 1st May, 1876, to respondent, than he was paying previously to Smillie.

Judgment confirmed.

Kerr & Carter, for appellant.

Macmaster, Hall & Greenshields, for respondent.

COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C.J., MONK, J., RAMSAY, J., CROSS, J.

BRUNEAU et vir (defts. below), Appellants, & BARNES et vir (plffs. below), Respondents.

Married woman—Liability for necessaries consumed by the family.

A wife séparée de biens is not liable for the price of necessaries purchased for the family of her husband and herself and charged by the seller to the husband—and especially when the husband has given a note for the price of such necessaries, and the wife is sued as endorser pour aval.

The appeal was from a judgment of the Superior Court, Montreal, Rainville, J., Nov. 30, 1878, maintaining an action against the female appellant.

The action was against husband and wife on a note made by the husband to the order of E. Mathieu & Frère, endorsed by his wife *pour aval*. This note represented the balance due for groceries supplied by E. Mathieu & Frère to the family of the female appellant and her husband. The goods were charged in the books to the husband.

The judgment of the Superior Court was as follows:—

"La Cour, après avoir entendu les demandeurs et la défenderesse Dame Adélaide E. Bruneau, par leurs avocats respectifs sur le mérite de cette cause, le défendeur, F. X. N. Berthiaume, n'ayant pas plaidé à l'action et étant duement foreclos de ce faire, examiné la procédure et les pièces produites, entendu les témoins cour tenante et délibéré;

"Considérant qu'aux termes des articles 165 et 173 du Code Civil, les époux contractent par le seul fait du mariage, l'obligation de se secourir et assister mutuellement et de nourrir, entretenir et élever leurs enfants;

"Considérant qu'aux termes de l'article 1317 du Code Civil, la femme séparée de biens doit supporter entièrement les frais du ménage s'il ne reste rien au mari;

"Considérant que la clause de son contrat de mariage par laquelle le mari s'est obligé de supporter toutes les charges du ménage ne peut avoir d'effet qu'entre les parties et non vis-a-vis les tiers, et serait contraire à la loi, à l'ordre public, et aux mœurs, si on l'interprétait de manière à décharger la femme de l'obligation de nourrir et entretenir ses enfants et son mari dans le cas où ce dernier en est incapable;

"Considérant que les effets dont le prix est réclamé en cette cause sont des choses nécessaires à la vie, et ont été employés à l'usage du ménage de la défenderesse;

"Considérant que le mari de la défenderesse est insolvable, et était insolvable au temps de la livraison des dits effets et de la confection du billet en question en cette cause; c'est-à-dire au temps où a été contractée la dette dont le paiement est réclamé par la présente action;

"Renvoie les plaidoyers de la dite défenderesse, et condamne les défendeurs conjointement et solidairement à payer à la demanderesse la somme de $403.19, cours actuel, savoir: $384.97, montant du billet promissoire daté Montréal, le 23 Avril, 1877, fait et signé par le défendeur, François Xavier N. Berthiaume, payable à quatre mois de date, à l'ordre de MM. E. Mathieu et Frère, au Bureau de la Banque du Peuple, pour valeur reçue par les effets ci-dessus mentionnés: lequel billet a été endossé pour aval par la dite défenderesse, Dame Adélaide Bruneau, duement autorisée par le dit défendeur, son mari, et remis aux dits E. Mathieu et Frère, qui l'endossèrent et le remirent à la demanderesse, pour valeur reçue: et $18.22 pour l'intérêt accru sur le montant du dit billet, depuis son échéance, jusqu'à l'institution de cette action: avec intérêt sur $403.19, à compter du 10 Juin, 1878, jour de l'assignation jusqu'à paiement, et les dépens distraits," &c.

Sir A. A. DORION, C.J., said this Court decided in the case of *Hudon & Marceau** that the test of responsibility is, to whom was credit given? Here the goods were ordered by the husband and charged to him in the books of E. Mathieu & Frère. The wife *séparée de biens* could not lawfully become security for this debt. She was, therefore, not liable, even if the goods were all necessaries of life; but some of the items, such as brandy and cigars, could not properly be regarded as such.

MONK, J., differed on the ground that in this case the wife had all along admitted her liability for the goods which were supplied from time to time to the family. It was notorious that the husband was a pauper, and that the goods would not have been supplied unless the sellers had looked to the wife for payment.

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* 1 Legal News, 603; 23 L.C.J., 45. (See also *Bachlaw* v. *Cooper et vir*, 3 Legal News, 128.)

The judgment is as follows :—

"La Cour, etc.,

"Considérant que le billet du 23 Avril, 1877, sur lequel est portée cette action, a été signé par F. X. Berthiaume, le mari de l'appelante, pour et en considération de la somme de $270.50, montant d'un billet antérieur donné par le dit Berthiaume pour effets à lui vendus par la maison Mathieu et Frère, et pour une autre somme de $114.57, aussi pour effets à lui vendus et livrés par les dits Mathieu et Frère ;

"Et considérant que lors même que ces effets auraient été nécessaires à la vie de l'appelante et de sa famille, ces effets ayant été avancés au dit Berthiaume seul, la dite appelante, femme séparée de biens d'avec son mari, n'était point responsable d'iceux, et qu'en endossant le dit billet du 23 Avril, 1877, elle s'est rendu caution d'une dette dont son mari était seul responsable, et que l'obligation qu'elle a par là contractée est, aux termes de l'Art. 1301 du C.C., nulle et de nul effet ;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure, siégeant à Montréal le 30me jour de Novembre, 1878, en autant que la dite appelante y a été condamnée à payer conjointement et solidairement avec son mari le montant du dit billet, avec intérêt et depens ;

"Cette Cour casse et annule le dit jugement, &c., et renvoie l'action des intimés contre l'appelante, avec dépens," &c. (Dissentiente l'Hon. Juge Monk.) Judgment reversed.

Prévost & Prefontaine for Appellant.

D. E. Bowie for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, June 22, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, TESSIER & CROSS, JJ.

CHAMPOUX (plff. below), Appellant, & LAPIERRE (oppt. below), Respondent.

Building Society—Rights of Shareholder—C. S. L. C., cap. 69.

A shareholder in a Building Society, who has approved of an arrangement with a creditor of the Society, whereby the creditor granted delay on condition that the Society should not sell its real estate, waives thereby his right to bring the real estate of the Society to sale in satisfaction of his claim as a shareholder.

The judgment appealed from was rendered by the Superior Court, Montreal, Rainville, J., Jan. 31, 1879, maintaining an opposition. The circumstances were these :—Champoux, the appellant, was a shareholder in the "Société de Construction Mont Royal," and on the 7th June, 1876, he was elected one of the Directors of that Society. About this time, Lapierre, the respondent, held a claim of $31,000 against the Society, which it was unable to discharge. Under these circumstances, the Board of Directors, on the 12th July, 1876, passed a resolution, moved by A. Desjardins, seconded by the appellant, "que M. Charles Forté, Sec.-Trésorier de la Société Permanente de Construction Mont Royal, est par le présent autorisé à faire préparer et signer un engagement à prendre avec le dit André Lapierre (the respondent), par rapport à diverses sommes dues par la Société, au dit André Lapierre, et pour y établir les termes et conventions résultant de l'acte."

The arrangement made with Lapierre under this resolution was to the effect that the Society acknowledged itself indebted to him in the sum of $31,000, of which Lapierre agreed not to exact more than $4,000 per annum, with interest at 8 per cent. ; and the Society, on its side, agreed, "pour assurer autant que possible au dit Lapierre le paiement et remboursement de la dite somme de $31,000, la dite Société ne pourra réduire le montant capital des obligations de ses membres emprunteurs, ou vendre ou aliéner tous ou aucun des immeubles que la dite Société possède actuellement, ou qu'elle pourra acquérir ou posséder par la suite, sans le consentement exprès du dit Lapierre et du dit Forté ès qual."

Soon after this deed of arrangement had been passed, the appellant desired to withdraw from the Society, and sued for his *versements*, and got judgment. Under this judgment he caused certain immoveables of the Society to be seized. Lapierre filed an opposition based upon the deed of arrangement above mentioned, and claiming that the immoveables of the Society could not be sold until the terms of the arrangement had been fulfilled.

The Court below maintained the opposition, the judgment being as follows :—

"La Cour, etc.

"Considérant que le ou vers le 12 Juillet, 1876, la défenderesse devait légitimement à

l'opposant une somme de $31,000, dont le dit opposant aurait alors eu le droit d'exiger le remboursement intégral; considérant que le dit opposant consentit à accorder délai à la dite défenderesse pour le paiement de la dite somme; et que, de son côté, la dite défenderesse s'engagea, afin d'assurer au dit opposant le remboursement de la susdite créance, à ne pas réduire le montant capital des obligations de ses membres actifs, ni vendre, ni aliéner aucun des immeubles que la dite défenderesse possédait ou pourrait posséder, sans le consentement exprès du dit opposant;

"Considérant que le dit arrangement fut approuvé par une assemblée régulière des directeurs de la dite Société demanderesse, au nombre desquels se trouvait le dit demandeur, laquelle assemblée fut tenue le 12 Juillet, 1876, et qu'en vertu d'une résolution passée là et alors à cet effet, un acte intitulé 'Déclarations et Conventions' contenant les conventions susdites intervenues entre la défenderesse et l'opposant, fut passé devant Mtre Théop. Bélanger, Notaire, le 17 Octobre, 1876;

"Considérant que le dit demandeur contestant était l'un des auteurs de cet arrangement, étant à la fois l'un des actionnaires et l'un des directeurs de la dite Société défenderesse; et que le dit arrangement ayant été fait tant pour le bénéfice de la dite Société que pour le bénéfice individuel du dit demandeur, ce dernier est lié par les conventions susdites et par l'acte qui en a été dressé;

"Considérant que le dit opposant n'a consenti au délai demandé qu'à la condition expresse qu'aucun des immeubles de la défenderesse ne serait vendu avant le paiement intégral de sa créance; qu'il n'eut pas accordé ce délai sans cette condition, et que les dits immeubles sont ainsi devenus, vis-à-vis des parties contractantes, le gage de l'opposant;

"Considérant qu'en outre, vû la dépréciation actuelle de la propriété foncière et les hypothèques qui grèvent déjà les dits immeubles, l'opposant a intérêt d'empêcher qu'ils soient vendus maintenant;

"Considérant que la saisie-exécution des dits immeubles, sous les circonstances ci-dessus relatées, et sans que le dit opposant ait donné aucun consentement à la dite saisie, est illégale et doit être annulée;

"Maintient la dite opposition et annule la saisie-exécution pratiquée en cette cause sur les dits immeubles, et en donne main levée à l'opposant, avec dépens contre le demandeur contestant, distraits à Messieurs Trudel, Taillon et Vanasse, avocats de l'opposant."

The appellant complained of this judgment, among other reasons, because he had an absolute right, under the C. S. L. C., cap. 69, to withdraw from the Society, and the agreement made by the Society with Lapierre could not interfere with the appellant's right, under the Statute, to be paid for his shares.

Sir A. A. DORION, C.J. (*diss.*), was of opinion that the judgment should be reversed. The appellant was not deprived of his right as shareholder to withdraw by his having approved of the deed with Lapierre while acting as a director of the Society.

RAMSAY, J., also dissented.

The majority of the Court held that the judgment was correct.

Judgment confirmed.

Mousseau & Archambault for Appellant.

Trudel, De Montigny & Charbonneau for Respondent.

CIRCUIT COURT.

MONTREAL, March 1, 1880.

JETTE, J.

OLIVER v. DARLING.

Security for costs—Motion for, will not be granted against a plaintiff who has left the Province since the institution of the action, if it appear that the motion was not made within four days of the knowledge of the departure.

The defendant presented a motion on the 20th February (which was the last day of court for that month) for security for costs, on the ground that the plaintiff had left the province since the institution of the action. The affidavit in support being informal, the motion was withdrawn, and a similar motion, with amended affidavit, was presented on the 1st March, the first day of the following term.

The COURT, in rendering judgment, remarked that as the law now provided that this motion could be made before the Prothonotary in vacation, the same diligence should be required as in the case of an absentee plaintiff bringing an action. Motion rejected.

Keller & Co. for plaintiff.

Trenholme & Co. for defendant.

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.

DOYER 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 moyens, *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.