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CAPIAS FOR INTENDED DEPARTURE.

The decision in appeal in the case of *Hurtubise & Bourret* (2 Legal News, 54; 23 L. C. J. 130), in which the law of capias was fully examined by Chief Justice Dorion, has already been followed in three somewhat prominent instances, and probably in other cases which have not been noticed in the reports. In *Hurtubise & Bourret*, the Queen's Bench held "qu'il "faut que le déposant donne dans son affidavit "des raisons suffisantes pour satisfaire la cour "que c'est *avec l'intention de frauder* que le dé- "biteur est sur le point de laisser immédiate- "ment la Province." Mr. Justice Jetté in *Ambrois* v. *Malleval* (2 Legal News, 159), gave a similar decision. In *Henderson* v. *Duggan* (5 Q. L. R. 364), in which case the debtor was a Canadian going abroad, Chief Justice Meredith held that even a person domiciled in Canada, and about to go to a foreign country, perhaps permanently, could not be arrested on capias, unless the departure was with fraudulent intent; and such fraudulent intent cannot be inferred from the proposed departure of a debtor who has left his debts unpaid. In other words, unless fraudulent intent be shown by the circumstances, a Canadian who is unable to pay his debts, cannot be prevented from going abroad to seek employment; nor can a person, resident abroad, and who comes temporarily within the jurisdiction, be prevented from returning to his foreign domicile, on the ground that he has debts in Canada.

In *Paulet* v. *Antaya*, noted in the present issue, the Court of Review follows the same doctrine, and the law on the subject is again stated in plain terms. No doubt further cases will frequently arise, as such proceedings are commonly taken in haste, on imperfect information, and are sometimes successful in bringing about a settlement, although not well supported by the facts. But an abuse of the process of the Court may not be without some risk.

LOANS BY CORPORATIONS.

In the case of *Royal Canadian Insurance Co.* v. *The Montreal Warehousing Co.*, Mr. Justice Johnson has elucidated a point which has already been briefly noticed in *Macdougall* v. *The Montreal Warehousing Co.*, decided by Mr. Justice Mackay (3 Legal News, 64). The latter case was inscribed in review from Judge Mackay's judgment, but the defendants desisted from their inscription before a judgment was rendered by the Court of Review.

Judge Johnson agrees with the learned Judge who rendered the previous decision, that the local legislature may grant authority to a local corporation to borrow at any legal rate, and he holds that, as the law now stands, for any company incorporated since 1858, any rate which may be specially agreed on between the borrower and the lender is a legal rate.

DEBTOR AND CREDITOR.

There is a spice of ferocity in the dealings of some Texan creditors with their debtors that carries one back to the days of the ancient *manus injectio*. One Wilson was creditor of a man named Buchanan for a sum of forty dollars. Meeting his debtor, he drew a knife and vowed that if Buchanan did not pay him what he owed him by the day after the morrow, he would kill him on sight. The debtor said: "Then you will have to kill me; for I have not "the money, can't get it, and don't intend to "try." Thereupon Wilson was as good as his word, and stabbed Buchanan in several places with the knife, wounding him so severely that he died about forty minutes after the occurrence. The jury, under a law of the State which gives them power to assess the punishment, awarded the murderer ten years' imprisonment, and the Court of Appeals has affirmed the conviction, remarking that the jury had tempered the law with mercy. (6th Texas Criminal Reports, p. 427.) This creditor was even more peremptory than the milkman in Toronto, who being unable to collect his dues, walked up and down in front of his debtor's residence, with a placard on his breast, bearing the inscription, "I am waiting for my milk bill;"—a variation of the ordinary style of dunning for which he was fined by the police magistrate.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, April 30, 1880.

SICOTTE, JOHNSON, RAINVILLE, JJ.

PAULET v. ANTAYA.

[From S. C., Richelieu.

Capias—Departure for a foreign country—Intent to defraud—A debtor is not liable to be arrested on capias for intended departure to a foreign country without paying his debt, unless the circumstances be such as to make him chargeable with intent to defraud.

JOHNSON, J. In this case the judgment of Mr. Justice Gill quashed a *capias*, and the plaintiff inscribes it for review. We are unanimously for confirming it. The judgment proceeded both on the insufficiency and on the untruth of the affidavit. As to the first ground, we say nothing about it, because the parties did not say anything about it; but as to the second ground, the untruth of the fact alleged in the affidavit, as far as concerns the intent to defraud, we entertain no doubt whatever that there was no such intent, and we hold that such intent is a prerequisite to the writ. I called the attention of the counsel at the argument to the case of *Henderson* v. *Duggan*, 5 Quebec Law Rep., p. 364, in which the history of the question and the difference between the old law of the 25 Geo. III, and the new law 12 Vict., c. 41, are clearly stated by Chief Justice Meredith. The old law kept the debtor in the jurisdiction, even where there was no intent to defraud: the new law, *for the first time*, made it necessary that there should be such an intent. Therefore, applying that rule, which is so well elucidated by the learned Chief Justice in the case of *Henderson* v. *Duggan*, we can have no hesitation about the fact itself; for if ever there was a case of abject poverty and misfortune, coupled with every effort honestly to pay, it is the present case. We say there was no intent to defraud, and we confirm the judgment with costs.

D. Z. Gauthier for plaintiff.

G. I. Barthe and *Longpré & Co.* for defendant.

JOHNSON, JETTÉ, LAFRAMBOISE, JJ.

CALLAGHAN v. VINCENT.

[From S. C., Montreal.

Assault—Conviction a bar to any other proceedings.

*A conviction for assault may be pleaded in bar to any other proceedings, civil or criminal, for the same cause.**

JOHNSON, J. The action was for damages for an assault. The defendant pleaded that he had been greatly provoked by the plaintiff's son, and that they, between them, had committed the first assault on him, and had had him arrested and taken before the Recorder, where he pleaded guilty of simple assault, and expressed his regret, and was fined $2.50 and costs; after which he had his turn and proceeded against the plaintiff and his son at Special Sessions, and for the first assault they had made upon him, he got them fined $15. Then the plaintiff, having had to pay $15 for his share of this row, and having got his nose broken, comes into the Court below and asks for damages—and he got there $15 damages. The defendant now brings the case here; and we must say that if we look at the merits, we do not think the judgment below is wrong. It is evident that the principle upon which the Court proceeded was the same as that adopted by the Recorder and the Magistrate, viz., that the first assault, though committed by the plaintiffs, being over, and a thing of the past, the defendant, after full time for reflection, came back and struck the plaintiff deliberately, an offence not affected, in a legal point of view, by the fact that the plaintiff had some time before that chucked bits of wood at the defendant, one of which had struck him.

We find ourselves compelled, however, to take a different view of the position of the parties, and upon a different ground. The conviction before the Recorder was for assault. There is no doubt this is a bar to a civil action, but the defendant's plea is confused; it recites what took place, however, and the submission and payment of the fine are proved, so that in law the plaintiff has no action. The Court below may easily have overlooked this, for the plea sets up what would appear more like a reconciliation than a plea in bar. Still, the facts are there sufficiently to show that the action does not exist. There is a case in point: *Marchessault* v. *Grégoire* (before Johnson, Torrance and Beaudry, JJ., 31st May, 1873, 4 R. L. 541).

* See 32-33 Vic. c. 20, s. 45; *Simard* v. *Marsan*, 2 L. N. 333.

We see, however, that both parties have concurred in this confusion. The defendant did not plead right, and so he cannot complain if there was judgment against him on the merits. On the other hand, we cannot say that the plaintiff has a right of action under the circumstances; therefore, we reverse the judgment, and dismiss the action, as well as the inscription in review, each party paying his own costs in both Courts.

Augé & Co. for plaintiff.

Archambault & Co. for defendant.

SUPERIOR COURT.

MONTREAL, April 30, 1880.

THE ROYAL CANADIAN INSURANCE CO. v. THE MONTREAL WAREHOUSING CO.

Interest—Corporation—Loan.

The local legislature may give local corporations authority to borrow money at any rate of interest already legalized as to other persons having the right to borrow.

Corporations other than banks, incorporated after 16th Aug. 1858, *may validly lend at any stipulated rate of interest.*

JOHNSON, J. The present action is to recover the amount of twenty-five *coupons* or interest warrants attached to the bonds issued by the defendants' company.

The declaration alleges that the defendants duly signed, sealed and issued the bonds on the 1st October, 1874, under the authority of the Act of the Province, 37 Vic., c. 57, and they were payable in thirtv years, with interest in the interval at the rate of seven per cent. per annum, semi-annually on the 1st of April and the 1st of October: That the plaintiff is the lawful holder of twenty-five of these bonds, and £7 sterling became due on each of them for six months' interest on the 1st of April last, and presentation was made at the place of payment, and the whole amount of interest on the 25 *coupons* is £175 sterling. The conclusion is for the equivalent of that sum in currency, with interest from the date of process, and costs.

The first plea of the defendants is that the plaintiffs are a corporation, and cannot by law take more than 6 per cent. for the advance or forbearance of money for a year; and the bonds in question were corruptly and usuriously issued upon a contract between plaintiffs and defendants to take 7 per cent. That the Provincial Statute 37 Vic., c. 57, was beyond the powers of the Quebec legislature, and could give no authority to the defendants to agree to pay a higher rate of interest than 6 per cent; the making of laws respecting interest being a power specially reserved to the Parliament of Canada; and therefore the coupons are of no value, and void, and no action can be maintained on them.

By a second plea, the defendants say, after repeating the absence of power by the Provincial Legislature to pass the 37th Vict., c. 57 that the bonds are void for any excess of interest over six per cent; but that nevertheless, ever since they were issued, the defendants have been paying, and the plaintiffs have been taking this excess, amounting now to a larger sum than is asked by the action, and which the defendants have a right to set off against the sum demanded.

The answers are general. Therefore, there would appear by the pleadings to be three questions: 1st, whether the acquiring of these bonds by the plaintiffs is to be considered as a loan of money by them to the defendants; 2nd, if it is so considered, whether it is void for usury either in the taking, or in the giving more than 6 per cent. (for both points are raised); and 3rd, whether the Act gives legal power to make the contract that has been made between these parties. This is the order in which the pleadings present these questions; but I think it is obvious that the last must come first, for if the contract in its present form has the express sanction of the Legislature acting within its powers, it would be quite superfluous to enquire whether, without the Act 37 Vic., c. 57, the transaction ought to have been looked on as a loan, or whether it would have been void entirely for usury, or only for the excess paid over 6 per cent., or for anything else that might have happened if the Act had not been passed. In a word, if by law it is a valid contract, it must be enforced, so that question would appear not only to be first in point of order, but first and last, and decisive of the whole case, if it should be found for the plaintiffs.

The 37 Vic., c. 57 (Quebec) is in these terms: "Whereas the Montreal Warehousing Company

have by their petition represented that it is necessary for the proper conduct and management of their affairs that certain further powers be granted to them in respect to the holding of property, and in respect of the borrowing of money, etc., etc.," then comes the power by section 1 to purchase and hold property of the annual value of $200,000. Then, by the 2nd section, the power to issue bonds or debentures; and finally, by the 3rd section, the power to agree upon the rate of interest. This would perhaps include both parties, unless we can conceive of a power to borrow, and to agree upon the terms on which the money is borrowed that would bind only one of the parties; and therefore, it might appear reasonably enough that it was meant to legalize this precise form of transaction as far as both of the parties are concerned; and much can be said in support of that view of the case; for the defendants may be said to have in a manner acknowledged not only the sufficiency, but the extent of the authority. They asked for it; they got it; they used it; they said, this is the precise thing we want to enable us to get money; and the only way we can get it is by being allowed to make an agreement with the lender as to the rate of interest. When they asked for power to make this agreement, what sort of agreement, it may be asked, did they mean? An agreement that should be no agreement? a thing that could never be enforced? good enough for the borrower to get the money, but worthless for the lender to get it back? Surely they must have understood, in asking for the authority to make this agreement, and the Legislature must have understood in granting their request, an agreement that was to be good and binding on both parties to it. The authority to borrow may be said to be a complex one, including in its terms, and of necessity, not the act of one alone, but the act of two, unless, as I said before, we can conceive an authority to borrow without a corresponding power to lend—in fact an authority to borrow from nobody—as if this act had said to the defendants: "You may borrow, but take care you don't ask any one to lend to you." If the authority here given, however, is not that delusive sort of authority; if it is a real and effective authority, it is one to borrow from any one who will lend, and to make an agreement as to the interest with any one who will enter into such an agreement, and who is, therefore, necessarily empowered to make it. This appears to me to be what might reasonably have been meant by this statute. If it has been made legal to borrow at interest to be agreed upon, it must have been made legal so to lend, unless you can have a borrower without a lender. The defendants have used this power; it has answered its purpose very well as far as they are concerned. They have got the money; it is only when the lender wants the power to extend to the whole transaction, and to protect him as well as them, that it is perceived how worthless the authority has been for all purposes but their own. Here is a power to make a valid agreement. How can a man agree alone? If the power means anything, it probably means an approval by the Legislature of what both parties consent to; for it is only what both parties consent to that could constitute an agreement.

I quite admit, however, that the precise legal points raised in this case must be decided on equally precise legal grounds; and though I have made these observations upon general principles of justice, I cannot of course decline to look at this statute as one conferring merely a power on the defendants, and nothing more, and therefore not depriving them of the legal right to question the power of the lender. The third section then, I hold, empowers the defendants on their part, and as far as depended upon them, to make an agreement. It puts them on the same footing as natural persons who required no authority (the law having already conferred it on such persons), and therefore the next thing to consider is whether this is a loan or bargain between the plaintiffs and defendants (for that is the ground it is put upon in the plea)—a corrupt bargain to take unlawful interest. As far, however, as concerns the legality of their own act in borrowing under a power that they asked for, and got, and used for their own benefit, I have not a shadow of a doubt. They invoked it themselves, as sufficient for their purpose at all events; but in using the power they got, if they have agreed with another party who had no right to make that particular agreement, they must be heard when they raise that question.

The pretension that the Quebec Legislature could not convey the power they asked for may

sound strangely in the mouth of the asker; but apart from that I hold that the local Parliament had the power. This was not a law to alter the rate of interest at all; it was not even a law to alter the rate of interest as between these parties: any rate of interest that might be agreed upon was at that time legalized between any parties having the right to lend and to borrow: it was merely a law to enable the defendants to borrow, and in doing so, to do what others might then have done without this permission. General legislation on the subject of interest was all that had been reserved to the Dominion Parliament by the Confederation Act; and this Provincial statute, on the express authority of the case of the *L'Union St. Jacques* v. *Belisle*,* decided by the Privy Council, clearly does not come within the prohibition; but on the contrary, under No. 16, of section 92, it is a matter of a merely local and private nature in the Province, and is within the capacity of the Provincial Parliament. It does not change the rate of interest, but merely empowers a local corporation to borrow at a rate of interest already legalized, *i.e.*, a rate that might be fixed by agreement. To make a general law regulating interest is one thing, while to give authority to borrow, and to agree to the lender's terms, within the limits of the law, is certainly quite another thing. So much then for the authority possessed by the Quebec legislature, and the authority conveyed by it, to say nothing of the authority admitted by the asking for it; so much for the authority to borrow. Of course these observations dispose not only of the question of power to borrow, but also the point of usury in so far as concerns the act of the borrower. Indeed, I never understood clearly how the contract could be said to be vitiated by usury in the borrower agreeing to take the money, even if he had no authority to borrow. The penalties of usury attached to the lender; he lost three times the sum lent; what had the borrower to lose? The only remaining question, therefore, is the question of usury in the lender taking over 6 per cent. on a loan.

Much could be said as to whether this was not a specific form of transaction contemplated by the Legislature, and, therefore, removed from the form of a direct loan or bargain between the parties, such as is alleged in the plea; but very little was said as to that at the bar; and it was clearly intended by both parties to submit the direct question, whether assuming this to be a loan or bargain, the plaintiffs had authority to take more than six per cent.; and to this last point, therefore, I will now address myself. The plaintiffs were incorporated by an Act of the Dominion legislature in 1873 (36 Vic. c. 99), and by the 5th section they got power to make loans "at any legal rate of interest, and to receive the same in advance." Can it be denied that in 1873, a stipulated rate was a legal rate? It is beyond doubt that a stipulated rate was a legal rate at that time; and it was only in the absence of stipulation that the law stepped in to determine what the parties might not have already determined for themselves.

But the defendants have contended that before the granting of the plaintiff's charter, there had been a fixed legal rate of interest for corporations theretofore existing in the Province of Quebec—which was 6 per cent. and no more, and that this charter of 1873 may have meant that particular and restricted rate of interest said to have been established for those corporations. Under the circumstances I might perhaps be excused from entering upon the question at all as to whether corporations in the province of Quebec are restricted to 6 per cent. on loans that they make, or whether the plaintiffs are one of those corporations; but it is a point of some interest perhaps, and I have looked at it, and have come to the conclusion that only certain corporations come under that category, and the plaintiffs are not one of them. The 17th Geo. III, c. 3, sec. 5, declared it to be unlawful to take more than 6 per cent. upon any contract, rendering it void for infraction, and prescribing a penalty of treble the amount loaned against every *person* who should offend; not a word about banks or other corporations of any kind. Unless, therefore, these latter were comprehended in the term "every person," they could not possibly have come under the operation of the law. But no doubt such corporations were included under that word. (See Maxwell on Corporations, p. 292, and our own Interpretation Act.)

The law remained in this state until the 24th March, 1853, when the Act 16 Vic., c. 80, re-

* 20 L. C. J. 29.

ceived the royal sanction. The preamble of this Act is: "Whereas it is expedient to abolish all prohibitions and penalties on the lending of money at any rate of interest whatsoever, and to enforce to a certain extent, and no further, all contracts to pay interest on money lent, and to amend and simplify the laws relating to the loan of money at interest." Accordingly, by section 1, the 5th section of the 17th Geo. III, was repealed, and the 2nd section declared that all penalties for usury were abolished, but by the 3rd section every contract involving payment of interest beyond 6 per cent. was made void so far only as regarded the *excess* over and above 6 per cent. The 4th section then declared that the Act did not apply to banks, insurance companies, or corporations or associations of persons heretofore authorized by law to lend or borrow money at a rate of interest higher than 6 per cent.

Then, by the 22 Vict. c. 85, sec. 1, the 3rd section of the 16 Vict. was repealed; and by the second section it was enacted, that it should be lawful "for any person or persons other than those excepted in this act" to exact on any contract or agreement whatsoever any rate of interest or discount which might be agreed upon. These excepted "persons" were, by the subsequent sections, declared to be the banks, which were allowed to loan at seven per cent., and corporations, or associations of persons not being banks theretofore authorized by law to lend or borrow money. At this time then (16th August, 1858), the usury laws were absolutely repealed, except as to banks and corporations or associations of persons *theretofore* authorized to lend or borrow money; and consequently every other description of "persons," which not only by the Interpretation Act of the then Province of Canada, but by the 6th section of the Act itself, was made to include corporations, were free to lend at any rate of interest whatever. The language of the statute consolidating the law respecting interest directly sustains this interpretation. Chap. 58 Consol. Stat. of Canada, in the 3rd section, says:—"Except as hereinafter provided, any person or persons may stipulate for, allow, and exact on any contract or agreement whatsoever any rate of interest or discount which may be agreed upon;" and the 6th section enacts that "nothing in the three last preceding sections of this Act shall be construed to apply to any corporation or company or association of persons not being a bank," (sections 4 and 5 applying exclusively to banks) "authorized by law before the 16th of August, 1858, to lend or borrow money"; and the penal section (No. 9), which appears to me not to consolidate or reproduce but to revive, an extinct penalty, is declared to apply to a "corporation or company or association of persons not being a bank authorized by law before the 16th August, 1858, to lend or borrow money." Then the Interpretation Act (ch. 5, Cons. Stat. of Can., sub-section 8 of sec. 6) says that the word "person" shall include any body corporate or politic. It is quite clear therefore that every corporation or company or association of persons, not being a bank, whose charter is subsequent to the 16th of August, 1858, is free to lend money at any rate of interest; and it is perfectly certain that the penalty provided by sec. 9 of the Consolidated Act is restricted to corporations, &c., chartered prior to the 16th August, 1858.

Subsequent legislation was referred to by the defendants as tending to negative this interpretation. There was the 23rd Vic., c. 34, and the 35th Vic., c. 70. The first of these statutes was passed in the session following that in which the Consolidated Statute was passed, and refers to insurance companies incorporated long before that statute (the date of which is 19th May, 1860), as it includes charters granted by the former Provinces of Upper and Lower Canada, and makes no reference whatever to companies to be incorporated after the passing of the Act. As matter of fact it seems very likely that the Act was passed, as it was said at the bar to have been, to relieve insurance companies that had been doing business in this country for a period long antecedent to the Consolidated Statutes. So also the second of these statutes refers to existing religious charitable or educational corporations existing in the Provinces of Quebec and Ontario, and not to any thereafter to be constituted, and in all probability referred to such institutions as our old religious corporations, hospitals, and, colleges. Besides, a penal law must be construed strictly, and not extended; and, as I have said before, there is doubt at least whether this was such a loan or bargain as was meant by the law, and the right to contract being

purely a civil matter is governed by our Provincial laws. As the legislature, therefore, gave authority to the defendants to get money on its debentures in the manner they did in this instance, the contract was, under the circumstances, perfectly legal, and binding on the defendants, and there is judgment against them for the sum demanded.

Bethune & Bethune for plaintiffs.

Lunn & Cramp for defendants.

SUPERIOR COURT.

MONTREAL, April 30, 1880.

Ex parte DELIMA LAVIOLETTE, petr., and TRUDEL and CAZELAIS, Justices, respondents.

Certiorari—Lapse of time without proceedings—The Crown may waive the objection arising from failure to proceed within the six months.

This was the merits of a certiorari under which a conviction of petitioner for having kept a house of prostitution in the town of St. Henri was brought up. It was agreed that the two Justices who had sat in the case were without jurisdiction. Jurisdiction was only given to them sitting at the *chef lieu* of the district, 32-33 Vic., cap. 32, and C. S. Can., cap. 105, sec. 31.

The facts of the case were peculiar. The conviction was made on the 18th June, 1878. Notice of an application for the certiorari was given on 19th December, 1878, for the 27th of same month. On the 21st January, 1879, the Attorney-General gave his consent to the application by petitioner, and on the 28th January, 1879, the writ was ordered to issue. On the 5th September, 1879, the writ did issue.

Husmer Lanctot, for respondents, moving to quash the certiorari, said the application came too late—after six months; *Ex parte Boyer*, 2 L. C. J., 188; *Ex parte Lareau*, 2 L. C. J., 189; *Ex parte Houghton et al. & Corporation of Quebec*, 5 Quebec L. R., p. 314. Further, magistrates could not be condemned to pay costs; *Ex parte Leonard*, 1 L. C. J. 255; *Ex parte DeBeaujeu*, 1 L. C. J. 15.

Globensky, for petitioner, cited *Reg.* v. *Spencer*, 9 Ad. & El. 485; Paley, Convictions, 411, 412, 420, 423, as to costs. As to jurisdiction, 32-33 Vic., c. 32, s. 15, Con. S. Can., cap. 105, s. 31; Clarke, Crim. Law, 567.

TORRANCE, J. It would appear from the authorities that the Crown could waive the objection as to lapse of time. As to costs, they are in the discretion of the Court. Conviction quashed without costs.

Christin & Globensky for petitioner.

Husmer Lanctot for Justices.

MENZIES v. BELL et vir.

Jurisdiction—Action in Ejectment.

An action in ejectment is a personal action, though a promise of sale be stipulated in the lease in favor of the lessee.

This was an action in ejectment under the Lessors Act. Plaintiff had leased to the female defendant premises at Calumet, in the district of Terrebonne. She was now resident at Montreal, where she was served with process to appear in the Lessor Court at Montreal. The lease contained a promise of sale.

Defendant put in an exception *déclinatoire* on the grounds: 1st, that she was in possession under a promise of sale, and she could not be impleaded in the Lessor Court; 2nd, that her right was a real right, and she should only be impleaded where the property was, namely, in Terrebonne.

Butler, for defendants, cited *Close* v. *Close*, 3 L. C. J. 140; *Senauer* v. *Porter*, 7 L. C. J. 42; *Lepine* v. *Jacques Cartier Building Society*, 20 L. C. J. 300.

Maclaren, for plaintiff, cited C. C. P. 34 and 38; *Scriver* v. *Stapleton et al.*, 2 Legal News, p. 190; 3 Delvincourt, notes, &c. (p. 93), p. 185 Lib. Ed.; 1 Poncet, No. 124; 3 Toullier, No. 388, and 12 do., No. 105, 4 Duranton, No. 73; 2 Marcadé on Art. 595, 1 No. 496; 9 Demolombe, No. 493; Cass., 6 Mars, 1861; S. V. 61, 1, 713; Journal du Palais, 1861, p. 1132; 7 Boncenne & Bourbeau, No. 452.

TORRANCE, J. The Court has jurisdiction. The right against the lessee is personal according to the authorities cited by plaintiff. Exception dismissed.

Trenholme, Maclaren & Taylor for plaintiff.

Butler for defendants.

MONTREAL, December 10, 1879.

LEGGE v. LEGGE, Jr., and SIMPSON, plaintiff *par reprise*.

Curatelle—Curator must be resident within the jurisdiction.

The case came up on demurrer to plea.

The action was *en destitution de curatelle*, by a daughter of the interdicted person, setting out that the curator resided in the Province of Ontario, that plaintiff was dependent on her father for support, and was unable to compel the defendant to contribute thereto.

After the institution of the action the plaintiff married, and defendant then pleaded that the Judge knew him, defendant, to be a resident of Ontario at the time of his appointment, and that plaintiff, since her marriage, was not dependent on her father for support.

Plaintiff demurred to this plea.

MACKAY, J., maintained the demurrer, holding that plaintiff was entitled to ask that the curator be resident within the jurisdiction, and that it was no answer to say that the Judge was aware at the time of his appointment, that he was not resident in the Province.

* Answer-in-law maintained.

Bethune & Bethune for plaintiff.

Kerr, Carter & McGibbon for defendant.

SUPERIOR COURT.

MONTREAL, February 26, 1880.

BEIQUE v. BURY.

Accommodation note—Knowledge by endorsee that note sued on was given as accommodation note is not a bar to the action.

The action was brought by Beique on a note made by Bury, defendant, payable to the order of F. A. Quinn, who endorsed it to plaintiff.

The defence was in effect that defendant received no consideration, and had given the note for the accommodation of Quinn, who was interested with plaintiff in certain real estate transactions; and that plaintiff knew that the note was an accommodation note.

MACKAY, J. This is an action on an accommodation note given by defendant to one Quinn. Judgment must go for the plaintiff. Whatever rights the defendant may have as against Quinn, he had no ground for resisting the plaintiff's demand. The fact that plaintiff knew that this was an accommodation note cannot affect his right to collect the amount from the maker, the note having been transferred to him, plaintiff, for value.

* By judgment (December 29) the action was maintained, and defendant's appointment set aside.

Judgment—"Considering plaintiff's allegations of declaration proved, and that by reason of anything proved the defendant cannot repel plaintiff's action, whatever rights or equities the defendant may have as against F. A. Quinn, doth adjudge," &c.

Beique, Choquet & McGoun for plaintiff.

Coyle & Leblanc for defendant.

RECENT ENGLISH DECISIONS.

Expulsion from Club—Insufficiency of notice.—The rules of a club provided that if the conduct of a member, in the opinion of the Committee, after inquiry, should be injurious to the welfare of the club, the Committee, on refusal of the member to resign, should call a general meeting, at which it should be competent for the votes of two-thirds of those present to expel the member. Another rule gave the Committee power to call a general meeting at a fortnight's notice. Charges being made against the plaintiff, the Committee, without summoning the plaintiff before them, requested him to resign, which he refused to do. Before 3 a. m. on Nov. 1, the Secretary posted a notice of a general meeting on the 14th. According to the custom of the club, this notice was considered as published on Oct. 31. At the meeting there were 117 members present, of whom 77 voted for expulsion and 38 against it. *Held*, that there had been no inquiry, no sufficient notice, and no two-thirds vote, and hence the plaintiff had not been duly expelled. *Labouchere* v. *Earl of Wharncliffe*, 13 Ch. Div. 346.

RECENT U. S. DECISIONS.

Insurance—Waiver.—The proofs of loss were not filed until after the time specified in the policy. No objection was at the time made on this ground; but the company examined the the party, and decided not to pay, on the ground of fraud. *Held*, that the company could not subsequently take advantage of the delay in filing the proofs of loss. No new consideration or technical estoppel is necessary to render a waiver effectual. An express waiver, or acts from which a waiver may be inferred, are sufficient to prevent the company from subsequently alleging the failure to comply with the condition. *Brink* v. *The Hanover Fire Ins. Co.*, (New York Court of Appeals, March 27, 1880.)