The Legal News.

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The entire draft of the proposed New York Civil Code, as to the enactment of which an animated controversy has long been in progress, is published as a supplement by the *N. Y. Weekly Mail and Express*. The text comprises 2,018 sections, or 597 less than our own Civil Code. The articles are tersely drawn, and some of the titles appear to be somewhat fuller than the corresponding titles of the Quebec Code. This draft was reported to the legislature twenty years ago, the author being Mr. Field. It was twice adopted by both houses of the legislature, but defeated by executive vetoes. In California, however, it was carried, and has been in force during the past eleven years.

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The *Law Times* (London) refers to the method of proving the law of a foreign country to a jury as an anomalous and unsatisfactory piece of practice. In a recent case the defence to an action on a promissory note raised a question of Argentine law, and in the usual course, a gentleman, who had practised law in the Argentine Republic, was called to elucidate this obscure subject. The result, our contemporary observes, "was an aggravated case of *obscurum per obscurius*. The gentleman in question, though doubtless an expert lawyer, was but an imperfect master of the English language, and his knowledge of English legal terms and technicalities appeared to be absolutely *nil*. To make matters worse, he was the only available exponent of the jurisprudence of his native land in London, and plaintiffs and defendant had each competed for such assistance as he could afford their case. It is not too much to say, that by the time this gentleman had been examined and cross-examined for a couple of hours, the jury knew about as much of the laws of the Argentine Republic as of those of Fiji, and but for the parties being able to agree on a translation of portions of the Argentine Code which were put in as supplementary evidence, the verdict would have been given quite as much upon matter of imagination as upon matter of fact. At the best of times, there is something highly irrational in leaving a body of laymen to decide questions of foreign law often of great technicality and intricacy. It would be more just and more expedient to leave these questions to be determined in the usual way by the judge, upon such properly authenticated evidence of the law in question as is always readily accessible."

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The *N. Y. Daily Register* suggests that counsel should be careful in entering upon cross-examination. "A vigorous and prolonged cross-examination," it says, "tends to make the jury think that the witness must have said something very damaging in his direct examination to require all this effort to break him down. If he is recollected to have said anything damaging, its importance is magnified by an apparent fear on the part of cross-examining counsel to let it go unqualified; if it is not recollected, or its damaging significance was not appreciated, the more intelligent of the jury set themselves to studying out what it was or imagining something. In either case, if the cross-examiner unluckily puts the question so common in one form or another on cross-examination which allows the witness to reiterate his former answer and clinch it, perhaps, with an addition, the result is to magnify and double the value of the direct examination at the same time manifesting to the jury the importance which counsel attach to the subject on which they are thus discomfited."

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## *TAMPERING WITH JURORS.*

In the course of his charge to the Grand Jury, at the opening of the March Term of the Court of Queen's Bench, Crown Side, Montreal (March 2), Mr. Justice Ramsay made the following observations:—

"There is one danger to which you are exposed, and to which I think it necessary, particularly at the present moment to draw your attention, and that is the manœuvres of interested persons to bias your minds. This applies to the petty jurors, who are supposed to be present and to hear the charge, as well as to you; but you have specially pledged

yourselves, by a solemn oath, to keep secret the Queen's counsel and that of your fellows. This you can scarcely do if you allow yourselves to be drawn into conversation about the matters which are to be laid before you. Sooner or later you will betray your trust, or suffer yourselves to be influenced by impressions and opinions unlawfully communicated. What you have to be mindful of is, to shun all communications with those outside of the jury-room relative to your business within its walls. I do not give you this caution to warn you against a danger to which you may be exposed, but to tell you of one which is only too real. A few months ago, in another town in this Province, one of the persons employed in the service of the Court, profiting by his position, conveyed a juryman, impaneled to try a capital felony, to an apartment distant from that of his fellows, and entertained him with drink for a considerable period of time. What passed between this unfaithful officer and the juror is only known by their own report, but the result was to disturb materially the course of justice.

In Ontario, the other day, a constable admitted having approached a juror in the interests of the accused. He was instantly, and very properly dismissed from his office. Among the bills to be submitted to you, there will be one or more charging two persons with an offence of a similar kind. It will be your duty to examine these accusations with great care and discernment, for there is nothing more justly alarming to the public mind than to have reason to believe that the administration of justice is subject to any unseen influence. In order that you may be prepared to appreciate the nature of the testimony that may be produced in support of these accusations, it is proper that I should explain to you the law on the subject.

Every attempt to suppress justice and truth, or even to delay justice is reproved by the common law. At a very early time the more common modes of interfering with the administration of justice were prohibited by statute, and two of them, maintenance and champerty (that is the mischievous maintaining suits and dealing in suits), were specially made punishable as misdemeanours by the II H. 6.

"The particular offence which will be brought under your notice is what is called embracery. It comes under the general head of maintenance and is defined as being "an attempt to influence a jury corruptly to one side by promises, persuasions, entreaties, money, entertainment and the like." IV Blackstone, Comm. 140. On this all the authorities are agreed. It is an indictable offence at common law as all other kinds of maintenance. 2 Hawkins, P.C. 413. The same writer tells us what acts of this kind are altogether unlawful. And he says: 'It 'seems clear that neither the party himself, 'nor his counsel, nor attorney, nor any per-'son whatsoever, can justify any indirect 'practices of influencing a jury, either by 'giving or promising them money, or men-'acing them, or instructing them in the 'the cause beforehand, &c.' Ib. 412. It is proper, however, to observe that it is not every word said to a juror relative to a suit or prosecution, which will come under the definition of embracery. And so it has been said: 'That any person who may justify 'any other act of maintenance, may safely 'labour a juror to appear and give a verdict 'according to his conscience, but that no 'other person can justify intermeddling so 'far,' &c. Ib. 412. Without entering into the justifications of maintenance, I may say in general terms that those are justified in maintaining suits who are interested in them.

"The first step in your examination will be to discover whether a *prima facie* case is made out, of solicitations to a juror or to jurors; the second, whether the persons accused of soliciting were interested in the proceeding, and if so, whether the solicitations were innocent in their nature,—that is, that they were no more than an invitation to be present, so that the party might have the advantage of the presence of the juror, to which he is entitled.

"There is another kind of interference which is not within the reach of the law, but which you can easily repress by a little firmness. There are many busy-bodies in the world, who, having no particular business of their own worth attending to, spend their time in meddling with matters that don't concern them, and very often with matters

which they comprehend very imperfectly. One of their fields of operation is making fussy suggestions to different members of the Grand Jury in order to air some hobby of their own. Nothing is more calculated to destroy the moral influence of the Grand Jury than would be the practice of dealing with matters which in no way concern them. Now, gentlemen, it is very specially your duty to bring to the knowledge of the Court any abuse which it is within the power of the Court to correct; but this you should do on mature consideration, and on your own responsibility, and not at the simple suggestion of others. If any one approaches you with a complaint about a matter you cannot enquire of personally, let him make an affidavit of circumstances, and return it forthwith, so that it may be inquired of immediately and justice be done. You are also authorised to visit the common gaol of the district, so that you may be able to assure the Court that it is kept in good order and under proper discipline, and that no one is unjustly detained there. On the other hand, it is not your duty to suggest to the Court what punishments the Court should inflict. These suggestions are generally the result of exaggeration and passion frequently produced by healthy prejudices, but not for that reason less to be avoided in the administration of justice."

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 6, 1885.

*Before* DORION, C.J., RAMSAY, TESSIER, CROSS, and BABY, JJ.

DUFOUR, Appellant, & ROY, Respondent.

*Landlord and Tenant—C. C.* 1054—*Responsibility for acts of tenant.*

HELD:—1. *That a tenant is not under the control of his landlord within the meaning of* 1054 *C. C., so as to make the landlord responsible for the negligence of the tenant in the use of the premises leased to him.*

2. *That a proprietor is not responsible for loss occasioned by sparks from the furnace and chimney of a tannery erected and leased by him, where there is no defect in the construction of the furnace, etc.*

This was an action of damages for setting fire to the barn and farm buildings of the appellant owing to the negligence of the defendants. The negligence consisted, it is alleged, in the construction and use of the furnace and chimney of a factory for the manufacture of leather. The declaration is in these words: "*Que la construction de la dite fournaise et du tuyau qui la surmonte était tellement dangereuse surtout avec le combustible employé, que lorsqu'elle était en fonctionnement ils mettaient le feu aux bâtisses environnantes.*" The defendants, respondent and one Turgeon, were sued without any distinction as having constructed and put in operation this machinery. It was also alleged in the declaration that the factory was built nearer the land of the plaintiff than was permitted by the concession to Roy by appellant, it being stipulated in the title of the former that he should put up no building, where he, in fact, built, for fear of fire.

The defendants severed in their defence. Roy pleaded that he was not working the tannery in question at the time, but had leased it to the other defendant Turgeon. By the general issue he denied any responsibility.

Turgeon pleaded that he was tenant; that he had done nothing to augment the risk, and that he had used special diligence and care in the operations.

By the judgment of the Superior Court, the tenant was condemned to pay $415 damages, and the action against the proprietor was dismissed, on the ground that the fire was not due to any fault of construction but only to the misuse by the tenant. From this judgment, as regards the proprietor, the plaintiff appealed.

The Court was of opinion that there was no evidence to establish that the respondent Roy carried on the works, and that Turgeon was his *préposé*. The relation between them appeared by the lease filed to have been that of landlord and tenant from the 12th Sept., 1881—eight months before the fire. There was also the testimony of Jules Dufour, nephew of appellant, and his witness, who says he was employed by Turgeon. There was no evidence of *vice de construction* to alter the ordinary rule of responsibility,

and it was not established that the factory had been built nearer plaintiff's buildings than the original concession from plaintiff allowed, even if this stipulation was binding on the appellant.

The Court therefore maintained the judgment of the Superior Court on the principle that Turgeon was not under the control of Roy (Art. 1054, C. C.), and that there was no defect in the construction of the factory.

Judgment confirmed.

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## COURT OF QUEEN'S BENCH.

QUEBEC, Feb. 7, 1885.

*Before* DORION, C.J., RAMSAY, TESSIER, CROSS, & BABY, JJ.

THE UNION BANK OF LOWER CANADA (plff. below), Appellant, and NUTBROWN (deft. below), Respondent.

*Hypothecary action—Averments of declaration—Evidence.*

HELD: 1. (*Confirming the judgment in Review*, 10 *Q.L.R.* 287)—*That the allegation in a hypothecary action of the granting of a hypothec is in effect an allegation that the person creating the hypothec had power to do so, and therefore under such allegation the Court will admit evidence to prove the existence of such power.*

2. *That the plaintiff in a hypothecary action must prove that the grantor of the mortgage was proprietor of the immoveable hypothecated at the time the mortgage was granted, and that this cannot be shown by verbal testimony.* (*Renaud & Proulx*, 2 *L. C. Law Journal*, 126, *approved.*)

3. *Where two notaries, as witnesses, sign a conveyance of lands held in free and common soccage their signatures must be proved like those of other witnesses.* (*C.S.L.C. Cap.* 37, *Sect.* 56.)

4. *A deed of conveyance of land which has not been signed by the purchaser will not make proof that he had power to create a hypothec on the property.*

RAMSAY, J. This is an hypothecary action brought by appellant on an obligation of the 21st Dec., 1867, by "The English and Canadian Mining Company" to Dr. Jas. Douglass, for $40,000, payable in five years, with interest at 8 per cent., and for security of which sum the said Company hypothecated half of lot No. 14 in 14th range of the township of Leeds. The deed was registered on the 31st March, 1868. On the 26th June, 1871, Douglass transferred $10,000 of this sum to appellant with priority of hypothec, and this transfer was registered on the 17th July, 1871.

The respondent met this action by a demurrer, setting forth that it was not alleged in the declaration that "The English and Canadian Mining Co." was owner in possession of the property of the Company, or that the Company was incorporated, or what powers those creating the mortgage possessed. The defendant besides filed three pleas. By the first he pleaded that the pretended obligation was false and simulated; that the English and Canadian Mining Co., had no legal existence, and that those who signed for the Company were not authorised to sign, and that the whole deed was simulated and unreal. By the second plea the defendant pleaded a possession of thirty years and more by himself and his *auteurs*. And by his third plea he pleads that he cannot be dispossessed until he has been paid $800 for improvements.

In the Court of first instance the demurrer was dismissed, and on the merits it was held that the chain of plaintiff's titles went back to the original patent to Sergeant Harris in 1834; that respondent's possession could not go back further than 1853, and that as he was a possessor in bad faith he had no right to his improvements.

Respondent took the case to Review, where it was held that the demurrer was rightly over-ruled, and the declaration was declared to be sufficient. It was also decided that Nutbrown had not established his prescription of thirty years, and that he had no right to improvements, if any he had made, as he was a possessor in bad faith. Furthermore, the Court decided that it was established that his pretended improvements were really none, as the land would have been more valuable as a forest than it is now with the wood cut. But the Court held that it was necessary in an hypothecary action to show

that the party granting the mortgage had a right to mortgage, that this could not be shown by verbal testimony, and that in this case the title was incomplete. In support of this opinion, the Judges in Review suggested two objections, the former of which seems only to have been held by one Judge, the other two expressing no decided opinion upon it; but all three agreeing in the second objection.

The first of these objections was that the execution of the deed under which it was alleged that "The English and Canadian Co." held was not proved; that is, there was no evidence of the signature of the vendors or of the quality of the persons signing for the selling Company. The second objection is that the deed of obligation and hypothec was not signed by the President and Secretary of the English and Canadian Mining Company, and was not sealed by the seal of the Company as it purports to be, and therefore the action was dismissed *sauf à se pourvoir*.

The majority of the Court is of opinion that the judgment of the Court of Review should be affirmed. As I am not sure whether we are perfectly agreed as to all the reasons which have led us to this conclusion, I shall endeavour to explain the view I take of the case.

In the first place it is unnecessary to refer to the demurrer, as we have the whole case before us on the merits. I think, however, it is to be regretted that demurrers are received with so little favour in our courts. The question of law can be as well decided on a suppositious case as on the evidence, and at much less cost.

The deed in question (13th Sept., 1858), which is not in notarial form, is attested by two witnesses, who appear to be notaries, as they have appended the letters N.P. to their names. Section 56, cap. 37, C. S.L.C., enacts that a conveyance of lands held in free and common soccage may be conveyed by a deed before two witnesses, or before a Notary and two witnesses, or before two Notaries in the form of Schedule D, and this deed may be registered on the affidavit of one of the witnesses. There is nothing in the Statute to declare that the deed, being signed by a Notary and two witnesses, or by two Notaries, shall prove itself; but it is argued that, in the absence of any such provision, we are to consider the Legislature to have constituted as a notarial deed any contract of conveyance which one or two notaries has witnessed, and this more particularly, as notarial deeds have no particular form. The majority of the Court cannot adopt that view. We are of opinion that the intention of Section 56 was to enable parties to make a conveyance either in the notarial form, which is well known to the law, or before witnesses in the English form, and that if two notaries sign as witnesses their signatures must be proved as if they were witnesses. A notarial deed on its face shows the authority of the notary, and the letters "N.P." are only used to indicate more completely which is the notarial signature. We, therefore, think the judgment should be confirmed on that ground alone.

As to the second objection, it is clear that the deed is not complete. It was to be signed by the purchasers, and so it is declared in the deed, but in fact it never was signed by them. The form D referred to in section 56, cap. 37, C. S. L. C. contemplates the signature by both vendor and purchaser. The statute expressly declares that the intention of the bargainor to sell and of the bargainee to purchase must be manifest by the deed, and there is a place in the form for the two signatures. But the reason to doubt that this is essential arises from this, that the right to convey, by a deed in the English form, land in free and common soccage is derived from the 9 Geo. IV., confirmed by the 20 Vic., cap. 45, s. 1, an act subsequent to that last cited, which was of the 4 Vic. It is, therefore, evident that any deed under the English form would be a full conveyance. Now would this deed, in its incomplete form, convey property in England? And can its insufficiency be supplemented by its future acceptance by another deed by which the purchaser refers to the sale, recognizes it, and mortgages the land? I confess that if it had been necessary to decide this point, in adjudicating on this case, I should have required more time than I have had, to enable me to understand sufficiently the intricacy of English conveyancing. I may, however, say that I think the deed is

incomplete, and that it could not be made complete by any act of the purchaser, save its acceptance. There are covenants in the deed which bind the purchaser, and the general principle seems to be that in any agreement the party charged ought to sign. Where one of the parties charged does not sign, perhaps this might be covered by an acceptance, by another deed to which the vendor is a party, but if it is a stipulation of the deed that the purchaser must sign, I don't see how the failure to sign can be got over by some other act of one of the parties. No competent notary would deliver an expedition of an imperfect deed such as this is. It is, however, said, there is the delivery here of the original. Can we presume from that the consent of the vendor?

But I do not think the case need turn on either of these questions. I agree with the two courts in their appreciation of the evidence that at the time of the institution of this action the respondent had not acquired the prescription of 30 years. But he had occupied for nearly 30 years as owner. This would have availed him nothing in face of a good title going back to an actual possession *animo domini*. This, it seems to me, appellant has not got. Bignell's title from Harris is not proved. We have only a copy of the registration—the loss of the original is not proved, and the copy we have got purports to be attested by only one witness. To my mind there is no evidence of possession by any of these pretended proprietors. The only thing they did with regard to the land was to seek for ore there with Nutbrown, and not as owners of the land. They never dispossessed Nutbrown, who remained from that day till he was sued as he had been, the undisputed possessor *animo domini*. On the Harris lot appellants, therefore, claim to have an hypothec from persons who only had fabricated titles, without any dealing with the land as owners save their own assertions. The title is in Harris, but appellants are not Harris.

Two other points have been urged in favor of appellants. First, that the defects of their title are not specially pleaded. Second, that titles are relative, and that appellant's title is better than the respondent's. The answer to the first of these points is, that appellants filed these titles with their answers, and without special permission, which should only have been granted with leave to replead, and by the judgment their rights are saved. As to the second point, I can hardly understand this doctrine of relative titles. One title defeats another, but hardly because it is *relatively* better. Here, however, the question is between a title from a non-possessor and possession, and the rule is *melius est causa possidentis*.

The judgment of the Court of Review will be confirmed.

TESSIER, J., said that a notary who did not attest a notarial deed was only a witness. A notarial deed set forth the fact that it was made "Pardevant le notaire soussigné," the place where he was acting and for which he was matriculated.

Judgment confirmed.

*Laurier & Lavergne* for appellants.
*E. Crépeau, Q.C.*, for respondent.

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## COUR DE CIRCUIT.

MONTMAGNY, 9 février 1885.

*Coram* ANGERS, J.

PAQUET v. THE CANADIAN PACIFIC RAILWAY COMPANY.

*Assignation—Art. 34 C. P. C.—Exception déclinatoire—Juridiction.*

JUGÉ:—*Qu'une personne engagée à Montmagny, pour aller travailler sur la ligne du chemin de fer que construit la Compagnie du Pacifique dans la province d'Ontario, ne peut poursuivre la défenderesse à Montmagny, endroit où elle a été engagée, pour recouvrir d'elles des dommages occasionnés par le refus de la dite défenderesse de procurer de l'ouvrage au demandeur, quand celui-ci s'est présenté pour obtenir de l'ouvrage à l'endroit où la compagnie construisait la dite ligne de chemin de fer dans la province d'Ontario.*

Le demandeur par son action réclamait des dommages pour la somme de $46.25, alléguant dans son action que dans le cours du mois d'octobre 1883, il avait été engagé à Montmagny, par un des agents de la défenderesse, pour aller travailler sur la ligne du chemin de fer qu'elle construisait dans la province d'Ontario; qu'il avait quitté Montma-

gny sous la conduite d'un des agents de la défenderesse, qui avait payé son passage et s'était rendu à la tête du lac Supérieure, dans la province d'Ontario, s'était présenté aux agents de la défenderesse, pour obtenir de l'ouvrage, mais qu'on avait refusé de lui en procurer.

La défenderesse a rencontré cette demande par une exception déclinatoire alléguant que la Cour à Montmagny n'avait pas de juridiction pour juger cette cause, parcequ'il apparaissait par la déclaration du demandeur que la cause d'action était originée non dans le district de Montmagny mais dans la province d'Ontario, et que sous ces circonstances la défenderesse ne pouvait être assignée qu'à son domicile légal en la cité de Montréal. La défenderesse s'appuyait sur l'article 34 C. P. C.

La Cour a maintenu l'exception de la défenderesse et a rendu le jugement suivant:

"La Cour etc.;—

"Considérant que la demande du demandeur est pour dommages lui résultant du refus de la défenderesse d'employer le demandeur sur ses travaux dans la province d'Ontario aux termes d'un engagement verbal allégué fait à Montmagny; que le refus de l'employer est la cause de l'action, lequel refus a eu lieu hors du district de Montmagny, et que partant la Cour ici n'a point de juridiction à défaut d'assignation de la défenderesse dans ce district, maintient l'exception déclinatoire de la défenderesse avec dépens."

*P. Aug. Choquette*, Pro. du demandeur.

*Abbott, Tait & Abbotts*, Pros. de la défenderesse.

*Charles Pacaud*, Conseil.

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## COUR DE CIRCUIT.

MONTMAGNY, 19 février 1885.

*Coram* ANGERS, J.

MESSURIE v. THE CANADIAN PACIFIC RAILWAY COMPANY.

Les faits sur lesquels est basée cette action sont à peu près les mêmes que dans la cause précédente, mais en outre des dommages que le demandeur réclamait, pour de l'ouvrage que la défenderesse avait refusé ou négligé de lui procurer, immédiatement après son arrivée à l'endroit de l'exécution des travaux de la défenderesse, il réclamait aussi un certain montant, comme balance qui lui était due sur gages. Dans ce cas comme dans l'autre la Cour a maintenu l'exception déclinatoire de la défenderesse et rendu le jugement suivant:

"La Cour etc.;

"Considérant que la demande du demandeur est pour dommages et gages; que les dommages sont pour refus ou négligence de la défenderesse à Ontario d'employer le demandeur sur ses travaux en cette province; que les gages demandés sont pour travaux faits par le demandeur pour la défenderesse aussi à Ontario, en vertu d'un engagement verbal fait entre les agents de la défenderesse et le demandeur en la ville de Montmagny, que le dit refus ou négligence d'employer le dit demandeur et le dit travail du demandeur sont les causes d'action du demandeur, lesquelles ont originées à Ontario et que partant la Cour à Montmagny, à défaut d'assignation dans les limites de ce district, n'a point juridiction, maintient l'exception déclinatoire de la défenderesse avec dépens."

*P. Aug. Choquette*, Pro. du demandeur.

*Abbott, Tait & Abbotts*, Pros. de la défenderesse.

*Charles Pacaud*, Conseil.

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## COUR DE CIRCUIT.

MONTRÉAL, 20 février 1885.

*Coram* DOHERTY, J.

ROBILLARD v. FINN.

*Billet promissoire—Droit d'action—Exception déclinatoire.*

*Le 16 août 1884, le défendeur Timothy Finn, résidant à St-Eugène, dans le comté de Prescott, Ontario, consentit et signa, en ce lieu, en faveur du demandeur, son billet, par lequel il promit payer, sous trois jours, à l'ordre du demandeur, au bureau de poste de Mongenais, dans le comté de Vaudreuil, district de Montréal, la somme de $70 pour valeur reçue; mais le billet ne fut pas honoré à échéance.*

*Jugé, sur exception déclinatoire: Que le droit d'action en cette cause a pris naissance à Mongenais, district de Montréal, où le*

*billet était payable et où le défaut de payement a eu lieu, et non à St-Eugène, dans la province d'Ontario, où réside le défendeur et où le billet en question a été consenti et signé.*

Le défendeur, poursuivi à Montréal, pour le montant du billet susmentionné, a produit à l'encontre de cette action, l'exception déclinatoire suivante, par laquelle il allègue :

1o. Qu'il (le défendeur) n'est pas justiciable de cette cour, parce qu'il réside dans la province d'Ontario, hors des limites de la juridiction de cette cour.

2o. Qu'il n'a pas été assigné *personnellement* dans les limites du district de Montréal, mais à St-Eugène, comté de Prescott, dans la province d'Ontario.

3o. Que le billet sur lequel est fondée l'action en cette cause, a été consenti et signé à St-Eugène, province d'Ontario, hors des limites de la juridiction de cette cour.

4o. Que bien que le lieu où le billet en question devait être payé soit dans le district de Montréal, cette raison n'est pas suffisante pour donner juridiction à cette cour. Et il concluait au renvoi de l'action sauf recours devant le tribunal compétent.

A l'audience, le demandeur combattit vigoureusement cette exception, soutenant que dans le cas actuel, le droit d'action avait pris naissance au lieu même où le défendeur avait manqué de remplir son obligation, c'est-à-dire à Mongenais, dans le district de Montréal ; et à l'appui de ses prétentions, il cita les décisions suivantes :—*Thompson* v. *Dessaint*, 14 L. C. J. 184 ; *Joseph* v. *Paquet*, 14 *ibid.* 186 ; *Welch* v. *Baker*, 21 *ibid.* 97 ; *Danjou & Thibodeau*, 1er Déc. C. d'Appel, 98 ; *Davidson & Laurier*, 1er Déc. C. d'Appel, 366.

Au cours de ses observations dans cette dernière cause, l'honorable juge Ramsay fit les remarques suivantes :—" If we look to the reason of the rule, it seems to me to be entirely in favour of saying that there is jurisdiction at the place where the right of action arises, and not where the cause or the whole cause, or all the circumstances out of which the action originates, arise. In the first place it is more practical. A right of action arises where there is *a breach of the contract*, where the parties have agreed to act and *where the wrong is done*. There is nothing equivocal in that, but if we are to go into the whole causes there is no end to metaphysical difficulties..... In the second place, there is no hardship in one being sued *for his fault or his failure*, at the place where *his wrongdoing or neglect took place.*"

De son côté, le défendeur a cité : *Wurtele* v. *Lenghan et al.*, 1er R. J. de Q. 61 ; *Mulholland et al.* v. *La compagnie de fonderie de A. Chagnon et al.*, 21 L.C.J. 114.

La cour, après mûre délibération, a renvoyé l'exception déclinatoire du défendeur, avec dépens.

Exception déclinatoire renvoyée.*

*Archambault, Lynch, Bergeron & Mignault*, pour le demandeur.

*Macmaster, Hutchinson & Weir*, pour le défendeur.

(J. G. D.)

## *LES CREANCIERS DE SARAH BERNHARDT.*

Mme Sarah Bernhardt, ayant des dettes et étant dans l'impossibilité de les payer intégralement, s'est décidée à abandonner à ses créanciers une partie de ses appointements, d'ailleurs frappés d'opposition. Par l'organe de M. Chérancy, son avoué, elle a introduit un référé tendant à ce qu'il lui fût permis de prélever chaque soir sur les 1,500 fr. versés chaque jour pour elle, à la caisse du théâtre de la Porte-Saint-Martin, une certaine somme destinée à faire face à ses mêmes dépenses. M. Baudoin, avoué, se présentait pour M. Ballande, créancier de 12,500 fr. ; M. Popelin, pour M. Derembourg, créancier de 81,652 fr. ; M. Champetie de Ribes, pour M. Langlois, créancier de 20,000 fr. ; M. Engrand, pour M. Laplague, créancier de 22,000 fr. D'autres créanciers, assignés par leur débitrice, ont fait défaut. M. Duquesnel, directeur du théâtre de la Porte-Saint-Martin, s'est présenté en personne. M. le président d'Aubépin, juge des référés, a rendu l'ordonnance suivante :

" Nous président,

" Attendu qu'il y a lieu de limiter l'effet des oppositions formées sur les appointements de Sarah Bernhardt qui lui sont nécessaires, pour partie au moins, pour faire face tout à la fois aux besoins matériels de sa vie et à l'exercice même de sa profession d'artiste ;

" Au principal renvoyons les parties à se pourvoir et cependant dès à présent et par provision, vu l'urgence, autorisons Sarah Bernhardt à toucher de Duquesnel & Cie la somme de 600 fr., par chaque représentation donnée par elle, l'effet des oppositions demeurant provisoirement réservé sur le surplus de ses émoluments ;

" Nommons Duquesnel, directeur de la Porte-Saint-Martin, séquestre à l'effet de retenir le surplus des appointements pouvant être dus à Sarah Bernhardt et à le répartir à qui de droit, ou de le consigner pour le compte des ayants-droit."—*Gaz. Pal.* 15 *janv.* 1885.

* Voir aussi *Faucher* v. *Painchaud et al.*, 3 L.N. 316.