J. B. PARÉ & AL, (DEFENDANTS).....APPPELLANTS ; 1894

AND *Mar. 1.
*May 1.

JOSEPH PARÉ, (PLAINTIFF).....RESPONDENT ;

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Accounts—Action—Promissory note—Acknowledgment and security by notarial deed—Novation—Arts. 1169 *and* 1171 *C. C.—Onus probandi—Art.* 1213 *C. C.—Prescription—Arts.* 2227, 2260, *C. C.*

A prescription of thirty years is substituted for that of five years only where the admission of the debt from the debtor results from a new title which changes the commercial obligation to a civil one.

In an action of account instituted in 1887, the plaintiff claimed *inter alia* the sum of $2,361.10, being the amount due under a deed of obligation and *constitution d'hypothèque*, executed in 1866, and which on its face was given as security for an antecedent unpaid promissory note dated in 1862. The deed stipulated that the amount was payable on the terms and conditions and the manner mentioned in the said promissory note. The defendants pleaded that the deed did not affect a novation of the debt, and that the amount due by the promissory note was prescribed by more than five years. The note was not produced at the trial.

Held, reversing the judgment of the Court of Queen's Bench for Lower Canada (appeal side), that the deed did not effect a novation. Arts. 1169 and 1171 C. C. At most, it operated as an interruption of the prescription and a renunciation to the benefit of the time up to then elapsed, so as to prolong it for five years if the note was then overdue. Art. 2264 C. C. And as the onus was on the plaintiff to produce the note, and he had not shown that less than five years had elapsed since the maturity of the note, the debt was prescribed by five years. Art. 2260 C. C.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side), (1) by which the appellants in their quality of heirs under benefit of inventory of the late Louis Paré were condemned

*PRESENT :—Fournier, Taschereau, Gwynne, Sedgewick and King JJ.

(1) Q. R. 2 Q. B. 489.

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to pay to the respondent nine-twelfths of $3,987.38, with interest from 2nd May, 1887, and costs.

Louis Paré died on 19th December, 1886, intestate, leaving the parties in the cause as his heirs and legal representatives.

By his action, the respondent claimed: 1st, the sum of $2,361.10 under a deed of mortgage executed in his favour by the late Louis Paré on 9th February, 1866, which contained the following clause:

"Lequel, par ces présentes, dit et déclare que par et en vertu d'un certain billet sous seing privé, en date du quatre novembre, mil huit cent soixante-trois, qu'il a consenti à Joseph Paré et à défunt Pierre Paré, ses frères, alors marchands, du même lieu aux droits duquel Pierre Paré, le dit Joseph Paré, marchand de St. Vincent de Paul, susdit, se trouve subrogé: il doit au dit Joseph Paré, la somme de cinq cent quatre-vingt-dix livres, cinq chelins et six deniers du cours actuel, avec l'intérêt sur le taux de sept par cent par an, le tout payable comme et de la manière expliquée au dit billet."

2nd. He claimed $1,532.68, balance of an account for goods and merchandise sold to, work done for, money loaned to, board furnished to and rent of tools and vehicles leased by Louis Paré and due to respondent, and 3rd, he claimed the sum of $327.15 for expenses of last illness and funeral of Louis Paré, board and lodging for him and care of his horses after his death.

The appellants pleaded.

1. The deed of mortgage conferred no right of action on respondent as it was given solely as collateral security for a promissory note of a like amount. That the deed of mortgage did not effect novation, and that the original debt was prescribed by the lapse of five years.

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2. The respondent never advanced any money to Louis Paré. Louis Paré always paid for any goods he may have purchased from respondent. No agreement existed between Louis Paré and respondent, whereby he undertook to pay for tools and vehicles, or for board and lodging. These were furnished, if at all, gratuitously. Any payment of debts of the succession were paid by respondent with moneys of the succession The respondent cannot claim for the care of the horses after Louis Paré's death, because he made use of them for his own purposes, and diminished their value by bad treatment.

For the three years preceding his death, Louis Paré had a contract with the Federal Government to furnish stone to the penitentiary at St. Vincent de Paul. From this contract he received about $5,000 per annum, or a total for the three years of $15,000.

Geoffrion Q.C., for appellant, cited and referred to arts. 1171, 1169, 2247, 2264 and 2227 C. C. *Larocque* v. *Andrés* (1).

Ouimet Q. C., for respondent cited and relied on—Guyot Repertoire, (2); Aubry & Rau (3); *Séguin* v. *Bergevin* (4); *Pigeon* v. *Dagenais* (5); arts. 2184, 2185 C. C. Pothier Obligations (6).

The judgment of the court was delivered by:

TASCHEREAU J.—The parties in this cause are the legal representatives of one Louis Paré, who died intestate, in 1886.

Joseph, the respondent, plaintiff in the cause, by his action instituted shortly after Louis' death, claims from the appellants their shares, amounting to $3,869, of a claim, amounting to $4,220.93, which he, the respond-

(1) 2 L. C. R. 335.
(2) Vo. Novation p. 227.
(3) P. 365.
(4) 15 L. C. R. 438.
(5) 17 L. C. Jur. 21.
(6) Bugnet ed. no. 179.

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ent, alleges he had against Louis at his death, composed of three different sums, as follows:—

1. $2,361.10, due by the deceased as per a notarial deed of obligation and *constitution d'hypothèque* consented by him to plaintiff, respondent, on the 9th February, 1866, twenty years before his death.

2. $1,532.68, balance of an account between plaintiff, respondent, and the deceased, for moneys advanced, goods sold and delivered, board, rent of tools, etc.

3. $327.15, for last illness and funeral expenses paid by plaintiff, respondent.

To the first item the appellants have pleaded, besides the general issue, an exception as follows: They first deny that the plaintiff has any action on the notarial deed of 1866, alleged in the declaration, because this deed, as appears on its face, was only passed to give him a security for an antecedent unpaid promissory note of 1863, that Louis had made in his favour; that the said deed constituted no novation and no new debt, and can at most, be considered as having interrupted the prescription of five years against the said promissory note of 1863, by which interruption, according to (Art, 2264 C.C.) a new five years' prescription began to run from that date, if the note was then due: that the said promissory note, dated twenty-four years before this action was brought, was due and payable more than five years before the institution of the present action, and that consequently it is extinguished by prescription. By a special replication (there is no general one) the plaintiff answers that plea of prescription, not by denying at all that five years had elapsed since this debt was due, as alleged by the defendant, and consequently admitting it, (art. 144 C. P. C.) but by saying that the deed of 1866 constituted a new debt, which said new debt was prescribed only by thirty years: that the old debt on the promissory note of 1863, was

extinguished by that deed of 1866, and replaced by a new one, one based on a notarial deed; that any prescription that might have accrued was interrupted at various times by admissions and payments by Louis himself in his life time.

On the issue so joined between the parties on this part of the action, I am of opinion that the plaintiff's action as to this first item entirely fails. This deed of 1866 is certainly not a novation of the promissory note of 1863; it does not purport to be so on its face. It is a mere security given for it. It reads thus:—

"Lequel par ces présentes, dit et déclare que par et en vertu d'un certain billet sous seing privé, en date du quatre novembre, mil huit cent soixante-trois, qu'il a consenti à Joseph Paré et à défunt Pierre Paré ses frères, alors marchands, du même lieu, aux droits duquels Pierre Paré, le dit Joseph Paré, marchand de St. Vincent de Paul, susdit, se trouve subrogé: il doit au dit Joseph Paré, la somme de cinq cent quatre vingt-dix livres, cinq chelins et six deniers du cours actuel, avec l'intérêt sur le taux de sept par cent par an; *le tout payable comme et de la manière expliquée au dit billet.*

"Et pour assurer au dit Joseph Paré ici présent et acceptant le payement de la dite somme de cinq cent quatre-vingt-dix livres, cinq chelins et six deniers du dit cours avec les intérêts, le dit Louis Paré a soumis, affecté, obligé et hypothéqué, un emplacement de forme triangulaire." etc.

That is all that this deed contains. The promissory note of 1863, was evidently not thereby paid or extinguished. So much so that Joseph, the respondent, kept it, and has it to the present day in his possession, or what is the same thing, in the possession of his attorney *ad litem* in this case, to whom it was handed for the purposes of this litigation. If, as he now con-

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tends, this note had become extinguished by that deed, it would then and there have been given over to Louis. That deed, it is true, contains an implied promise to pay, but to pay what? Clearly, the debt on the promissory note of 1863, not a new debt at all, not a new obligation, and purports to merely give security for a pre-existing debt which was to remain unaltered and payable on the same terms and conditions. It contains no express promise to pay, but refers to the note as a subsisting instrument for the terms and conditions of payment. It simply admits the debt of 1863, and gives security for it. There is in it no intention to novate that I can see, in fact, novation is incompatible with its terms taken in connection with the all important fact that the respondent retained the note. The subrogation of the respondent alone as payee to himself and Pierre jointly, if that could affect at all the question, is not done by the deed, but is treated as having previously taken place.

And did not the respondent have a right of action on the note, notwithstanding this deed? The affirmative is not doubtful, it seems to me. Then if the first debt was not extinguished, there was no novation. Art. 1169, 1171 C.C.; and if there was no novation, art. 2264 C.C. decrees in express terms that a deed in such a case is nothing else but an interruption of the prescription, and a renunciation to the benefit of the time up to then elapsed, so as to prolong it for five years more, if the note was then overdue.

This article 2264 of the Quebec Code is not happily worded. In fact the necessity for it is doubtful, and it might have been better not to enact it, as has been done in the French Code; any act, deed or document which operates as a novation of a debt, evidently annot be called an interruption of prescription. It extinguishes the debt altogether, and thereafter, the only

prescription that can apply is necessarily the prescription provided by law for the new debt. But if there has been no novation, any act, (*fait*) deed or document by which the prescription is voluntarily interrupted is nothing but a renunciation of the benefit of the time till then elapsed by which the prescription had begun to run: arts. 2184, 2222, 2227, C.C.; but the debt remains altogether the same and of the same character and consequently subject to the same prescription as before, which prescription then begins to run afresh from the date of the interruption; the same debt, the same prescription, except that the time thus far elapsed does not count. That is what art. 2264 of the Quebec Code purports to decree, and that is the law in France without such an express article. The contrary doctrine that a prescription of a debt say of five years should be extended to thirty years by an acknowledgment of it could not and did not prevail, though seemingly at various times it found a few supporters. The Court of Cassation in 1878, in a case of *Bourgade* v. *Bourgade* (1) and the Court of Appeal at Rouen in a recent case of *Duquesnay* in 1891, held that a short prescription when interrupted recommences for the same term, not for thirty years. A case of *Augier* (2) and one of *Spréafico*, (3) follows the same doctrine. I refer also to Dalloz (4) and to a case of *Carpentier*, (5) where one of the considérants of the Court of Cassation says on the question of prescription of promissory notes: "attendu que la reconnaissance par un acte séparé (required in France by art. 189 of the Code du commerce) devant avoir pour effet de substituer à la prescription quinquennale la prescription de trente ans ne peut résulter que d'un titre nouveau émanant du débiteur et *opérant novation*."

(1) S. V. 78. 1 469.
(2) S. V. 59. 2. 302.
(3) S. V. 59. 2. 357.
(4) Rep. Vo. *Effets de commerce.*
(5) S. V. 57. 1. 527.

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In 1855, the Court of Paris had held in the same sense, "qu'il faut un acte ayant *pour but* de faire novation à l'obligation primitive pour substituer la presciption de trente ans à la prescription quinquennale. *Re Philippon* (1). A note by Villeneuve to the case *re Cabrié* (2) fully resumes the discussion on that point. The Dict. du droit contentieux, par Devilleneuve et Massé (3) et seq. and the recent work of Bravard-Veyrières as annotated by Demangeat Droit Commun (4), may also be usefully referred to on the subject.

If there is no novation the interruption of prescription of a promissory note" says Bédarride (2 dr. Comm. No. 749) has no other effect but to render the debt subject to prescription by five years from the date of the interruption. I refer also to Alauzet; Comment. Code Commerce, (5); Demolombe (6); Leroux (7). If this note became due only after that deed of 1866, then the five years began to run only from its maturity, which is admitted to have been more than five years before the institution of the action. If it was due before the deed of 1866 was passed, then, there the prescription runs from the date of that deed. The interruption has changed the *point de depart.*

The respondent has cited Troplong (8), in support of his contention that an interruption under such circumstances prolonged the period of prescription, but if he had read on to the very next article of the same book, no. 698, he would have seenthat the author admits that doctrine "qu'autant qu'il y a un contrat exprès, explicite, séparé, opérant novation dans l'état des choses." And the Court of Cassation held in that sense in another case reported in Sirey (9), (in a case of *Baillet*

(1) S. V. 56, 2, 145.
(2) S. V. 53, 2, p. 540.
(3) Vo. Lettre de change nos. 525.
(4) Vol. 13, 2 ed, p. 551.
(5) Vol. 4 nos. 1555, 1560.
(6) Vol. 28 nos. 275 à 282.
(7) Nos. 77, 454, 456, 466, 519.
(8) Prescription no. 697.
(9) 38, 1, 708.

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v. *Lefebvre*), though art. 2264 of the Quebec Code is not to be found in express terms in the Code Napoléon, that the prescription of thirty years is substituted to that of five years, on promissory notes, only when the admission of the debt by the debtor results from a new title which changes the commercial obligation to a civil one. The respondent also cited Aubry & Rau, (1) but that passage does not support his case. It simply says that the acknowledgment of a debt subject to a short prescription puts off the term to thirty years when it is accompanied by a new engagement on the part of the debtor, and when the acknowledgment constitutes a title distinct from the primitive one and effective by itself. That is what I cannot see in the deed of 1866, a title distinct from the promissory note of 1863, and effective by itself. It leaves the note in full force and vigour. It refers to it for the terms of payment; therefore it was not effective by itself. There was thereafter, not two debts due by Louis Paré, but the very same debt contracted in 1863, payable on the same terms, and that is why the respondent kept the note, as proof thereof.

The Court of Review, though admitting that there is no novation of the debt, says that there is novation of title. It seems to me that this is a distinction without a difference, and the respondent has not succeeded to support it by authorities. On the contrary, I find in addition to the authorities I have already quoted, that the Court de Cassation held in 1826, (2) *in re Cardon* that: "Une dette originairement commerciale ne perd pas ce caractère par cela seul qu'elle est ulterieurement reconnue par un acte notarié et garantie par une hypothèque." In that case, a hypothec by notarial deed had been given as surety

(1) vol. 2 par. 215. (2) S. V. 27, 1, 6.

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for previous promissory notes. And though these notes had been given up to the debtor at the time of the passing of the deed, the court held that the debt still remained a commercial debt. How clearer is the present case, where the note was retained by the respondent.

La dation de billets négociables en paiement d'une dette civile n'opère pas novation dans la créance, à moins que de la manière dont les billets sont motivés, résulte clairement l'intention de nover ;" say Championnière et Rigaud (1), "réciproquement, la connaissance par acte notarié d'une créance consistant en billets n'opère pas nécessairement novation, et n'enlève pas à l'obligation son caractère commercial. La forme des actes n'influe pas en général sur la nature des obligations qu'ils contiennent, ainsi rien ne s'oppose à ce qu'un engagement contracté par acte notarié soit commercial ; dès lors le renouvellement d'une dette de cette nature, constaté par bes billets négociables, peut avoir lieu par acte notarié sans qu'il y ait novation."

In a case cited by the same authors, (2) of July, 1829, the maker of four promissory notes had by a notarial deed given a hypothec for the amount. It was contended that by this deed a novation of the debt had taken place. But, said the Castel Naudary Court, in terms that are so applicable to the present case, that I cite them *ipsissimis verbis :*

Considérant que ce système (c'est-à-dire la prétension qu'il y avait novation) est erroné . . . . que le titre qui constitue la dette est toujours la lettre de change ; que le contract d'affectation d'hypothèque n'a fait autre chose qu'assurer le paiement comme on le voit dans le contract lui-même, ce qui prouve bien qu'il n'a pas été dans l'intention des parties de faire novation puisque le contract est fait pour assurer de plus fort le paiement de ces lettres de change ; qu'il est si vrai que c'est toujours dans les lettres de change que se trouve le titre constitutif de la dette que c'est en vertu des lettres de change seules que le créancier pourra obtenir le paiement de sa créance, tandis que le contract d'affectation d'hypothèque ne lui suffirait pas ; que de tout ce qui procède il résulte que l'acte notarié n'a pas opéré de novation, qu'il a seulement ajouté une garantie de plus à un acte qui a conservé toute sa force.

(1) Dr. d'enregistrement, vol. 2, nos. 1011, 1019.

(2) Dr. d'enr. vol. 2, no. 1013.

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That judgment, it is true, was set aside by the Court of Cassation, August 5th, 1833, but that court has since returned to the doctrine that it had adopted by its *arrêt* of 1826, above quoted, and which, in Championnière & Rigaud, loc. cit., is clearly demonstrated to be based on sound principles.

In a case for instance, of *Crédit Agricole* v. *Goddard* (1), a hypothec by notarial deed had been given as surety of promissory notes. It was contended that the deed operated novation of the notes. But it was held by the Court of Cassation that

la novation ne se présumant pas, il ne suffit pas pour l'opérer d'augmenter ou de diminuer la dette, de fixer un terme plus long ou plus court, et *d'ajouter ou de retrancher une hypothèque, ni même de changer l'espèce d'obligation*, à moins que les parties n'expriment une intention contraire ou que le second engagement ne soit nécessairement incompatible avec le premier.

In a previous case of *Costé* v. *Quiquandon* (2) the same court had held in 1857, that

ne peuvent être considérés comme emportant novation la stipulation de nouvelles garanties, telles qu'une hypothèque, pour sûreté de billets promissoires.

See in same sense Larombière (3), and in the Court of Grenoble in a case of *Duverney* v. *Baudet*, (4) it was held that

une dette originairement commerciale ne perd pas ce caractère par cela seul qu'elle est ensuite reconnue par un acte notarié et garantie par une hypothèque.

Lorsque le titre primitif est expressément conservé, says Pardessus (5), (and here the fact of retaining the promissory note amounts to an express reservation by the respondent of all rights upon it) "et que sans renoncer aux droits qu'il lui attribuait, le créancier a voulu une nouvelle sûreté, il acquiert tous les droits de l'acte nouveau, sans perdre aucun de ceux que lui donnait le premier."

And at page 262 the same author says, what would not seem to me questionable, that to stipulate a hy-

(1) Dalloz 76, 1-438 ; S. V. 76, 1, 162.
(2) S. V. 58, 2-90.
(3) Vol. 5 p. 13.
(4) Vol. 5 p. 13.
(5) Dr. Comm. Vol. 1, p. 266.

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pothec for a pre-existing debt does not extinguish the primordial title. And

A plus forte raison, la passation d'un acte authentique destiné à remplacer un acte sous seing privé n'emporte-t-elle pas novation, encore que le débiteur ait par cet acte fourni de nouvelles sûretés, say Aubry & Rau (1).

Massé, Droit Commercial. Page 266, says 286. "Ainsi, une dette originairement commerciale ne devient pas purement civile par cela seul qu'elle est ensuite reconnue dans un acte notarié et garantie par une hypothèque. Il n'y a pas là substitution d'une obligation ou d'une dette à une autre : l'obligation change de forme, mais au fond elle reste la même malgré les garanties nouvelles dont elle est entourée et les voies d'exécution qui lui sont ouvertes. L'acte notarié n'opère pas novation de la dette qu'il constate, et dès lors le payement doit en être poursuivi devant le tribunal de commerce, et non devant le tribunal civil.

By article 189 of the Code de commerce, promissory notes are prescribed by five years, *if the debt has not been admitted by a separate deed.* In a case of *Roux* v. *Sompayrac*, (2) the Paris Court of Appeal held that a deed giving a hyphothec for surety of a note did not constitute the separate deed required by this article.

As to the importance in this case of the fact that the respondent retained the promissory note see *Sriber* v. *Hebenstreet* (3).

The fact that a hypothec has been given does not affect the prescription, as the respondent seems to contend by his replication to the appellants' plea. If the debt is extinguished by five years' prescription, the hypothec given for that debt is also extinguished by five years. Art. 2081, part 5 ; Art. 2247 C. C. Troplong, Hypoth. Nos. 875, 878.

The Superior Court and the Court of Review rely on art. 1213 of the Code for the purpose of establishing the proposition that the plaintiff was not bound to

(1) Vol. 4, par. 218 ; Laurent, vol. 32, nos. 168, 170, 171, 480 ; Leroux, no. 1363.

(2) Dalloz 51, 2, 180.

(3) S. V. 48, 2, 518.

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base his action on the promissory note or even to produce it. With great deference, I cannot adopt that view. Why did he not produce that note? It must be assumed against him by uncontroverted principles of the rules of evidence that it is because it would have told against his case. I do not think that this art. 1213 of the Code can so be taken advantage of by any one, to allow him to conceal from the tribunal that the subsisting primordial title which is in his possession, is prescribed or has lapsed for any cause whatever (1).

The doctrine that an act of recognition makes proof of the primordial title has no application where the primordial title exists, and is available to the parties. And the act of recognition in such case has no other effect but to interrupt the prescription.

The learned judge who gave the judgment for the Court of Appeal, bases his reasoning on the ground that the appellants have not proved that the note was due more than five years before the institution of the action.

Here is a note twenty-four years old when the action is brought; the respondent has it in his possession, but does not produce it; the appellants say that it is overdue more than five years. The Court of Appeals hold that the *onus probandi* to prove that it was so overdue, was on the appellants. I would be disposed to think that the respondent, under these circumstances had to produce the note, if he desired to show that it was not overdue as contended by the appellants. The best evidence of the controverted fact is in the document itself; and that document is in his hands. Was it not incumbent on him to produce it? However, assuming that the Court of Appeal was right in holding that the proof of this fact

(1) Demolombe vol. 29, nos. 707 to 713.

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was on the appellants, under the circumstances of this case, that ground cannot militate against them here, as the fact that it was so overdue for more than five years is not denied, and so is not in issue, and consequently is to be taken as admitted by the respondent's replication to the appellants's plea as I have already remarked, a fact which has undoubtedly escaped the attention of the learned judges. I would come to the conclusion that on this first item the plaintiffs' action fails, on the general issue because the deed of 1866 cannot alone give him a right of action, when the other one is subsisting, and because he should have based his action on the promissory note of 1863. The appellants would then, of course. have opposed him the prescription of five years, to which he would have replied the interruption of prescription by the deed 1866, if the note was due when that deed was passed. The same question would then have presented itself, whether, by this interruption, the debt was prolonged for thirty years or for only five years ; the answer, it seems clear to me, would have been that the debt was prolonged only for five years ; a contrary doctrine would read art. 2264 out of the Code. It is only as I have attempted to demonstrate if there had been novation that the prescription of thirty years would have been the one applicable against the plaintiff's claim. And, it seems to me unquestionable upon the authorities, that there was no novation. Moreover, it must not be forgotten that in such a case, if it were at all doubtful whether the parties intended to novate or not, the primordial title must prevail. Boileux (1) ; Larombière (2). However, assuming that the action could be brought on the deed of 1866 alone, as it has been, it must be dismissed on the plea of prescription.

(1) Vol. 4 p. 514.

(2) Vol. 5, p. 12.

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There is another view of this part of the case upon which, if the respondent had been successful on the other question, he would have met with a serious difficulty. He simply alleges in his declaration, this deed of 1866, without alleging when the debt became due, and produces the deed. The deed refers to the note for the terms of payment. He does not produce the note, or otherwise show that it was due when he brought his action. He contends that it was not necessary for him to do so, because the appellants pleaded payment and prescription. But is that a sound contention? The appellants, it is true, pleaded payment and prescription but "without admitting any of the allegations of the declaration, but on the contrary, denying them all formally," and pleaded, besides, the general issue. Now, had not the plaintiff to prove his case, before the defendants had to enter upon their defence? Did he prove that anything was due to him, when he sued? *Thayer* v. *Wilscam* (1); *Sarault* v. *Ellice* (2); *Leclerc* v. *Girard* (3).

Then, if the note is not prescribed as he would contend, he should by his action, or, at least, before he could obtain judgment against the appellants, have tendered it back to them, or deposited it in court to be handed back to them.

As to the other items of the respondent's claim, I adopt the Court of Review's reasoning and conclusions, and without entering into any other details, but those necessary to make the ground of my judgment intelligible to the parties themselves, I reach the result that the respondent's action must be dismissed in toto, upon the following statement:—

The respondent's claim on these items amounts to.....$5,004 29

(1) 9 L. C. Jur. 1.
(2) 3 L. C. Jur. 137.
(3) 1 Q. L. R. 382.

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I deduct from it:

Care during last illness..	$ 66 00	
Board of horses.	125 00	
Taking care of effects.....	25 00	
Pension for 12 months...	144 00	
28 months at blacksmith's shop.....,...	336 00	
38 months rent of derricks	380 00	
38 months' rent of tools..	76 00	
38 months' rent of wagons, &c.....	76 00	
38 months rent of harnesses	44 00	
For oats, hay, meal	60 53	
" " " from farmers.....	632 90	
Timber, Miller & Prevost	59 84	
Timber by plaintiff.....	62 00	
	$2,087 27	$2,087 27
		$2,917 02

$2,917.02, which is more than paid by the $3,144.45 to appellant's credit, so that it is unnecessary to consider the other deductions made by the Court of Review.

The result is that the appeal must be allowed, and the action dismissed, with costs, in the four courts against respondent, *distraits* to Messrs. Geoffrion, Dorion & Allan, appellants' attorneys.

Appeal allowed with costs.

Solicitors for the appellant: *Geoffrion, Dorion & Allan.*

Solicitors for the respondent: *Ouimet & Emard.*