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SEM LACAILLE (PLAINTIFF) ..... APPELLANT;

v.

LA CORPORATION DE LACAILLE }  
(DEFENDANT) ..... } RESPONDENT.

1931

\*Feb. 25.  
\*June 12.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,  
PROVINCE OF QUEBEC

*Promissory note.—Overdue—Letter granting delay for payment—Action after maturity—Delay not then expired—Whether action is premature—Rights of debtor.*

On September 3, 1929, the appellant sued the respondent corporation on four promissory notes overdue and the defence set up was that the action was premature because, on August 28, 1929, the appellant had written a letter to the secretary of the corporation stating *inter alia* that unless payment was made within fifteen days he would take proceedings; but he brought his action before the expiry of that time.

*Held*, reversing the judgment appealed from (Q.R. 49 K.B. 172) that the appellant was entitled to judgment. On the letter, the most the respondent might have hoped for was that on payment before pleading the court would relieve it of the costs up to payment.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1), reversing the judgment of the Superior Court P. Cousineau J. (1), and dismissing the appellant's action.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgment now reported.

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\*PRESENT:—Duff, Newcombe, Rinfret, Lamont and Cannon JJ.

(1) (1930) Q.R. 49 K.B. 172.

1931

LACAILLE  
v.  
CORPORATION  
DE  
LACAILLE.

*Charles Laurendeau K.C.* for the appellant.

*Hervé Roch* for the respondent.

The judgment of the court was delivered by

LAMONT J.—The facts in this case are not in dispute. The appellant sued the respondent corporation in the Superior Court on four promissory notes made by the corporation in favour of the appellant and amounting in all to \$6,073.47.

The defence set up was that the action was premature. At the time the action was brought, September 3, 1929, the maturity date of the notes sued on was passed, but the corporation relies on the fact that, on August 28, 1929, the appellant wrote to the secretary of the corporation a letter in the following terms:—

Je vous retourne vos billets pour la dernière fois et je vous avertis que d'ici à 15 jours si je n'ai pas un règlement de tous les billets je prendrai des procédures.

Je ne peux pas porter ces billets.

This letter, it was contended on behalf of the corporation, had the effect of extending the time for payment of the notes until the expiration of fifteen days from the date of the letter and, as action was brought within fifteen days, it was prematurely brought.

The first question to be considered is: Did the appellant, by this letter, intend to signify to the corporation that he was extending the time within which the notes would become due for another fifteen days, or simply to intimate that he would not exercise his right to sue on the overdue notes for that length of time? In my opinion the latter is the true construction. I cannot see in the letter anything that would justify the conclusion that the appellant was assenting to any modification of the terms of the obligations expressed in the promissory notes. Putting it at the very highest, the letter neither declares nor conveys by implication anything more than an assent to postpone the exercise of his undoubted right to sue. The letter is not to be construed as depriving the appellant of his rights to any greater extent than the language used calls for. Even conceding that it implies a promise to refrain from suing for fifteen days, and assuming that, in the circumstances, the respondent assented to this promise, such a

promise would not afford a defence to the action. That being so and the notes being overdue when the appellant sued, his action cannot be said to have been prematurely brought. On the letter the most the respondent might have hoped for was that on payment before pleading the court would relieve it of the costs up to payment.

The appeal should, therefore, be allowed, the judgment below set aside and the judgment of the Superior Court restored. The appellant is entitled to his costs throughout.

*Appeal allowed with costs.*

Solicitors for the appellant: *Lalonde & Lalonde.*

Solicitors for the respondent: *Baril & Tousignant.*

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Lamont J.