

from December, 1833, to 1832, after it had come into the possession of the indorsee (the plaintiff); and offered to instruct this fact instantly by parole evidence.

Muller
v.
Langeveld.

Menzies, J., and Kekewich, J., held that it was competent to receive this evidence.

The Chief Justice was of opinion that the parole evidence should not be received to stop a provisional sentence.

The defendant was allowed to prove his averment, and called

Dirk Aspeling, notary, who deponed that this note, in June last, was put into his hands by Muller, the plaintiff, to demand payment; that he did so, and that the defendant called his attention to the date, and that at that time it had the last figure 3 in 1833 distinctly visible; and also, superinduced on that figure, the angle in the darker ink, and somewhat resembling a second figure. That he returned the note to the plaintiff, and pointed out the date to him, and he said it was 1832, but witness said to him that it appeared to him to be 1833.

The lower part of the said figure 3 has since been erased. Provisional sentence refused, with costs.

Postea (28th February, 1834).—The plaintiff having previously given notice that he had withdrawn this action, Cloete, for the defendant, moved for a citation calling on plaintiff to bring a new action within six weeks, or in default to do this, to be barred therefrom, and perpetual silence imposed on him. (*Vide* Van der Linden, b. 3, pt. I, c. 3, § 5, p. 425.)

The Court refused the motion, with costs.

Postea (2d June, 1834).—Provisional sentence was again prayed and refused, with costs, in respect of the same note, on a summons which stated that the note bore date the 22d December, 1832 or 1833.

2. CANNON v. FORD.

[2d June, 1834.]

Defence of "Novatio Debiti" against a Provisional Claim on a Promissory Note.

In defence against the claim for provisional sentence on a promissory note by defendant in favour of plaintiff, payable three months after date, and dated 1st November, 1833.

Cannon
v.
Ford.

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Brand, for the defendant, produced an engagement under the hand of the plaintiff, to the following effect:—

“Mr. James Ford bought from me the value of Rds. 700 in furniture, and being now, from the loss of the money he expected to receive, unable to pay for it, I engage to wait till his claim is decided by the Orphan Masters, and if against him, to receive back the furniture, being paid for the price of it.

“W. E. H. CANNON.

“1st February, 1834.”

The Court held that this document had the effect of a *novatio debiti*, and that, under the conditions of the said engagement, the plaintiff was not entitled to demand provisional sentence at present.

Provisional sentence refused, with costs.

3. SMITH v. CAMPBELL.

[1st August, 1839.]

*Defence against a Claim on a Promissory Note that the Payee, who had Indorsed the Note, was a Non-rehabilitated Insolvent, who could therefore give no Valid Title to the Plaintiff.**

Smith
v.
Campbell.

This was a claim for provisional sentence on a promissory note, dated 1st January, 1839, made by the defendant to the order of Mr. Joseph Osmond, indorsed in blank, J. Osmond—G. Mills.

Musgrave, for the defendant, objected that Osmond's estate had been placed under sequestration in 1837, and that it had not been released, nor Osmond rehabilitated; consequently, the plaintiff had acquired no valid title to the note by Osmond's indorsation.

Cloete, for the plaintiff, replied that this was not such an objection as could be maintained against provisional sentence, when the defendant admitted his signature and the validity of the debt.

But the Court thought otherwise; and refused provisional sentence, with costs.

* This was by the provisions of Ordinance No. 64.—By the Ordinance No. 6, 1843, section 126, such indorsation would be good, if made after the confirmation of the account and plan of distribution.—[Ed.]