

The deceased was a young man of liberal culture and considerable abilities, and had attained a respectable position at the bar. Personally, he was a gentleman of high and estimable character, and enjoyed the warm regard and affection of a large circle of friends. We mourn with them the premature interruption of a career of activity and usefulness.

## NOTES OF CASES.

### COURT OF QUEEN'S BENCH.

MONTREAL, Feb. 2, 1881.

DORION, C. J., MONK, RAMSAY, CROSS, BABY, JJ.

EVANS et al. (plffs. below), Appellants, and McLEA et al. (dfts. below), Respondents.

*Principal and Agent—Commission Agents whose principals resided abroad held personally liable on contract signed by them in their own name, though the contract showed their quality of Commission Agents, and it was known to the other party that they were selling goods to arrive from foreign principals.*

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., Oct. 31, 1879, dismissing the action of the appellants. (See 2 Legal News, p. 370).

The action was by coal merchants, claiming damages because coal which they had purchased from the respondents had not been delivered to them.

In July, 1878, the respondents, J. & R. McLea, offered a quantity of coal for sale to the appellants, and, after some negotiation, a contract was entered into, dated Montreal, July 15, 1878, by which the respondents declared to have sold to Evans Brothers, the appellants, a cargo of Welsh anthracite coal, to consist of about 600 tons. It was proved that the appellants knew that the respondents were to get the coal from parties in Wales, and that it was to be shipped from there. Delivery was not made, and hence the action.

The defence to the suit was that the coal had been shipped, but the vessel had to put back, and it was impossible to deliver the coal as agreed. It was also pleaded that the respondents were commission agents, and were well known as such to the appellants; that they did

not transact with appellants on their own account, but as agents for Richards & Co., of Swansea, Wales, and that they were not at the time of the contract in possession of the goods sold.

The following is a copy of the contract :—

“ Cable Address, McLea.  
John B. McLea. Robert P. McLea.

“ J. & R. McLea,  
“ Commission Merchants and Ship Agents-

“ Montreal, 15 July 1878.

“ We have this day sold to Messrs. Evans Bros. of Montreal, a cargo of Welsh Anthracite Coals to consist of about 600 tons and to be shipped by sailing vessel, quality to be equal to their former purchases from us. Terms of sale, net cash on delivery. If purchasers wish to give a note at 3 or 4 mos. in payment of said cargo, we agree to take same providing interest be added at 7 0/0 per annum. Price of Coals to be four dollars per ton of 2,240 lbs.

“ J. & R. McLEA.”

Judgment was given in favor of the respondents in the Court below, the grounds being as follows :—

“ Considering that it is pleaded by the defendants in substance that the said contract was not one that could bind the defendants personally, nor therefore render them personally liable to damages for not performing it, but that the real parties to the said contract were the plaintiffs on one side, and Richards & Company, of Swansea in Wales, on the other, who were perfectly well known to plaintiffs as the parties they contracted with as principals, the defendants being their mere agents and *mandataires*, and disclosing the name of their principals;

“ Considering that the evidence in this case establishes in every respect the pretensions of the defendants, and that in the contract in question they were mere *mandataires* and not factors, not having possession of the thing sold, and that the case is to be governed by Article 1715, and not by article 1738 of the Civil Code, doth dismiss plaintiffs' action with costs.”

DORION, C.J., with reference to the case of *Crane & Nolan* (19 L.C.J. 309), which had been cited in support of the judgment of the Court below, said the two cases were quite different. In the latter case the name of the principal was declared in the contract, and the agents signed as “ commission agents ” to show that they did not intend to bind themselves personally. In the present case the contract was signed in the name of J. & R. McLea, without disclosing any principal at all. The respondents must be held