

Sept. 19.

ROLLAND, (defendant in the Court below) Appellant; and St. DENIS *et al.*, (plaintiffs in the Court below) Respondents.

Partnership—Separate Debt.

The defendant bought wood from one of the partners in a firm, in ignorance of the existence of the partnership. This partner owed him money, but the wood was the property of the partnership:—

Held, that the defendant could not set off the amount of his purchase against the debt due him by the partner from whom he bought, although the latter managed the affairs of the partnership:—

This was an appeal from a judgment of the Superior Court, rendered at Montreal by *Badgley, J.*, on the 30th of June, 1865, in favour of the plaintiffs.

The action was brought by J. Bte. St. Denis and Adolphe Roy, to recover the sum of \$534.55, for wood sold and delivered to the defendants by the plaintiffs, whilst the latter were partners. The plea of the defendant was that he had bought the wood from J. Bte. St. Denis, one of the plaintiffs, who had sold in his own name, and in set off to a sum of \$960 which St. Denis owed him. That at the time the defendant purchased this wood, St. Denis was carrying on business in his own name at Montreal and elsewhere, and no partnership was registered. The defendant further alleged that at the time he bought the wood, it was expressly agreed between him and St. Denis that the price was to be set off against St. Denis' debt.

By the judgment of the Court below, it was held that the wood was the property of the copartnership of the plaintiffs, under the firm of J. Bte. St. Denis & Co., established under articles of copartnership dated 18th Dec., 1860; that the defendant, as a separate creditor of St. Denis, one of the partners, could not legally set off the amount of his purchases from the copartnership against the separate debt due by St. Denis, who, moreover, without the consent of his copartner, could not pay the defendant his separate debt out of the goods of the copartnership.

From this judgment the defendant appealed, submitting that St. Denis, being the adminis-

trator and manager of the affairs of the copartnership, had the right to contract as he did in his own name; and, further, that the defendant had no opportunity of becoming acquainted with the existence of the partnership, and that the moneys he had advanced to St. Denis were employed about the partnership business.

Per Curiam. (DUVAL, C. J., MEREDITH, DRUMMOND, and MONDELET, JJ.) There being no error in the judgment, it is confirmed with costs.

F. X. Archambault, for the Appellant.

Leblanc, Cassidy & Leblanc, for the Respondents.

LEGER, (plaintiff in the Court below) Appellant; and TATE *et al.*, (defendants in the Court below) Respondents.

Sale of Raft.

Question of evidence as to terms of sale and value of a raft.

This was an appeal from a judgment rendered by *Monk, J.*, on the 30th November, 1865, in the Superior Court, Montreal. The action was brought for the sum of \$822.47, balance alleged to be due on account of a raft of timber, sold and delivered by the plaintiff to the defendants, containing 22,373 feet, at the rate of fourpence per foot. The declaration alleged the contract of sale on the above terms, and also contained the *quantum meruit* count. The plea was to the effect that the plaintiff sold the raft, with the stipulation that he was to get one halfpenny per foot more than he had paid for it to one Brodie, viz. twopence three farthings per foot, and that the balance due was only \$58.58, which the defendants brought into Court with their plea.

The plaintiff failed to prove the alleged contract of sale at fourpence, and did not establish any higher value than that admitted by defendants in their plea which was maintained by the Court below. The plaintiff appealed.

Per Curiam. (DUVAL, C. J., MEREDITH, and DRUMMOND, JJ.) The judgment was right and is confirmed with costs.

MONDELET, J., dissented.

Denis & Lefebvre, for the Appellant.

Mackay & Austin, for the Respondents.