of himself and other men to whom he may have delegated authority.

In estimating the amount of damage which should be awarded, the court must, however, consider not only the position of the plaintiff, who has lost money, but that of the defendant also, who is on bond to act to the best of his knowledge and judgment, and cannot be held a surety to the shareholder as to the investment made by him in the stock of the bank. At the time of the bank's insolvency the country was suffering from a commercial crisis. There is no evidence to show that all the losses made by the bank were attributable to the neglect of the defendant. The court must assess what the defendant should pay in a spirit of equity and justice, and fixes this amount at 60 per cent. of the loss suffered by the plaintiff. He was a creditor of the bank for $111,500. He has already been paid 12 per cent. of this amount from moneys realized out of the liquidation, and is therefore entitled to 60 per cent. of 88 per cent., which makes the sum of $58,872, and this amount, together with interest since 1882, and costs of action as taken, is hereby awarded him.

COURT OF QUEEN'S BENCH IN APPEAL. (1)

Letter of Credit—Guarantee.

Hathaway *et al.* (claimants), Appellants, and Chaplin (contestant), Respondent. The appeal was from a judgment which maintained the contestation of a claim filed by the firm of Hathaway & Jackson, of Boston, for the sum of $7,968 on the Exchange Bank of Canada in liquidation. The claimants, who are large stockyard owners and cattle dealers at Boston, claimed that the bank was bound to indemnify them for an alleged loss made by them upon two shipments of cattle from Boston to Liverpool by steamships "Bavarian" and "Iberian," on the 18th and 25th September, 1883. By the contestation it was averred that there was no liability on the part of the bank, and that it could not be held by the letter of credit or telegram of guarantee relied on, both of which were beyond the powers of the bank and were given without authority. The answer to this was that in August, 1883, McShane, then a customer of the bank with whom he had deposited security, and who were to give him financial assistance, proceeded to Boston, with the knowledge of the bank, and made

(1) Present: Chief Justice Lacoste, and Justices Baby, Bossé, Blanchet and Wurtele. Montreal, September 27, 1891.