

this—Patton talked of buying Cox's horse. He was told the price, and went to see it, and offered a cheque for the price demanded. He then took the horse away, drove it to Lachine, brought it back to his own stable and returned it lame the next day. His story was that he took it on trial and that he gave the cheque as security. The majority of the Court held that these answers to interrogatories rendered a sale *vraisemblable*, and allowed the introduction of parol testimony. On the evidence, if admissible, there was no doubt of the sale, and there was no attempt to avoid it.

There is another view of this case which was scarcely touched upon at the argument, but which appears to me conclusive, apart from the question of evidence under the French law, as to the mover's right to have leave to appeal. The matter is commercial, and under the English laws of evidence there could be no doubt the plaintiff could prove his claim (1206 C. C.)

DORION, C. J., remarked that there were two questions which were not to be confounded—the divisibility of the *aveu* and the commencement of *preuve par écrit*. The Article of the Code (1243) says the admission cannot be divided whether extra judicial or judicial. That had nothing to do with the question of commencement of *preuve*. A commencement of *preuve* is incomplete evidence which you may complete by verbal testimony. In the case of an *aveu* the indivisibility exists whether it would make complete proof or whether it would make a beginning only. The point came up clearly in the case of *Fulton & McNamee* (1) which went to the Supreme Court and was there confirmed. The answer is divisible when the facts are not connected, when the answer is contradictory of the pleas, or when there are contradictions in the answer. These exceptions do not apply in this case, and we say the evidence was properly excluded.

Motion for leave to appeal rejected.

Laflamme, Huntington, Laflamme & Richard for appellant.

Geoffrion, Rinfret & Dorion, for respondent.

(1) 2 S. C. R. 470.

SUPERIOR COURT.

MONTREAL, July 5, 1884.

MULDOON et al. v. DUNNE et al.

Action of account—Costs.

The rendering of an account à l'amiable which has not been accepted does not relieve a rendant compte from the obligation of rendering an account en justice, but the defendant will not be condemned to pay costs.

The facts and circumstances of the case will be found sufficiently explained in the judgment which follows.

The defendants pretended that it was not true either in fact or in law that they had refused to render an account, as alleged in the declaration. They had in fact rendered their account in due form, and the action should have been *en débats de compte* or *en réformation*;—*Trudelle v. Roy*, 4 L. C. Rep. 222, and *Cummings & Taylor*, 4 L. C. Jur. 304. Under any circumstances the plaintiffs should not have asked that the defendants should be condemned to pay costs, and they had the right to contest the action to that extent.

The plaintiffs on the other hand claimed that the action *en débats* had no existence and was something unheard of. The action *en réformation* only applied where the account rendered had been accepted. The plaintiffs were entitled to sue for an account with the view that such disputed points as had arisen might be decided by the court, a result which otherwise it would never be possible to reach; *Dalloz*, Jur. Gén. Vo. Compte, Sec. 2, Nos. 31, 35 and 36. As to the costs the defendants should pay them, since they have asked the dismissal of an action which was in every way legal and regular; instead of at once admitting that they were bound to render their account in court. Had they done this they no doubt might have asked that the costs of the action should be reserved, until it should appear upon the discussion of the account itself, which of the two parties to the dispute was really in the wrong; or they might possibly have pleaded as in *Trudelle & Roy*, 4 L. C. Rep. 222,—with the view that should it turn out upon the *débats de compte* that the defendants had always been in the right, the plaintiffs should be condemned to