

of the note, which the defendant swears has been forged and altered as above mentioned in his plea, and has been so forged and altered since he endorsed it.

It is hardly necessary that I should premise by stating that in the investigation of this case, I have altogether, to use a familiar expression, thrown overboard whatever remained on my mind of the evidence and circumstances as they were proved before me in the Queen's Bench when the trial of McNevin took place in the Criminal Court, which I presided over. I am, as in duty bound, solely governed by the present case as it comes up.

The first question to be determined, and it is a very important one to the plaintiffs, is, whether in the face of defendant's plea, supported by his above mentioned affidavit, the genuineness of the note is still to be presumed, and as a consequence, whether the plaintiffs were or were not absolved from the obligation of proving their case, in all its bearings. Here is the section (86 of ch. 83, C.S.L.C.): "If in any such action (on a bill of exchange or promissory note, &c.,) any defendant denies his signature, or any other signature or writing to or upon such bill, note, *cedule*, check, promise, act or agreement, or the genuineness of such instrument or of any part thereof, or that the protest, notice and service thereof (if any be alleged by the plaintiff) were regularly made, whether such denial be made by pleading the general issue or other plea, such instrument and signatures shall nevertheless be presumed to be genuine, and such protest, notice and service to have been regularly made, unless with such plea there be filed an affidavit of such defendant, or of some person acting as his agent or clerk, and cognizant of the facts in such capacity, that such instrument or some material part thereof, is not genuine, or that his signature or some other to or upon such instrument is forged, or that such protest, notice and service were not regularly made, and in what the alleged irregularity consists." From the precise wording of the above recited section, it is evident that the genuineness of the note now in question

ceased to be presumed the instant the defendant specially denied it in his affidavit. It is also evident that the plaintiffs had to prove that the note they sued upon is a genuine note, and not a forged one in part, as solemnly sworn to by the defendant. The defendant might have rested his case there. Our law is precise and imperative; there is no choice for plaintiffs, but to make out their case, the *onus probandi* being upon them, with respect to the genuineness of the note. Singularly enough, the plaintiffs have not considered their case in that light, and since they are advised to rest it upon what they have done, I presume, they either view the section of the statute to be in their favour, or that the defendant has made such admissions as to exonerate them from the obligation of proving their case. The Court is, therefore, called upon to adjudicate upon the case as it now presents itself for consideration.

In ordinary cases, when the signature is not denied, when the genuineness of a note or of any instrument is not gainsaid, the same are presumed to be genuine and true. It is also certain that in pleading to such an action as the present, the defendant might have made such admissions as would have taken the *onus probandi* off the plaintiffs. Principles governing such cases are as well known as they are obviously elementary. But to the application of such general principles, so sound, so reasonable in themselves, and so practically wise, our Provincial law has very wisely also, and most logically, appended an exception which is equally wise and logical; and by our own law and not by any other, and much less by decisions which are not under its provisions, is this case to be governed and decided. The Court must, therefore, in obedience to the law, declare that the plaintiffs have, in all respects, failed to prove their case, and that were there no evidence whatever adduced by the defendant, in support of his plea, supported by his affidavit, there would be no other alternative for the Court than to dismiss the plaintiff's action.

The features of this case, however, are