

with Meunier, by selling him oats. They began to speak of this \$180 which had been paid by the clerk, and although there was nothing definite in what was said by either of them, yet it was certain that Morin expressed his belief that this \$180 was included in the \$300. Meunier seemed struck by this, and appeared desirous of leaving it to the clerk. His Honour was of opinion that it must be assumed the matter was settled according to the pretension of Morin, and he thought there was sufficient to justify him in saying that this \$180 was in reality included in the receipt for \$300. That point in the case was thus disposed of. Next, as to the receipt for \$600; if it was possible for the Court to arrive at a just conclusion upon that point the case was disposed of. It was certain that on the 21st of September an amount of money was paid to Morin. The circumstances were briefly these: Morin was in want of money. He sent a man to Meunier at Montreal. This man said that when he arrived Mad. Meunier told him her husband was absent, and that she could only give him \$50. When the messenger returned to Morin with the \$50, the latter said he was sorry, as he wanted more. This corroborated the man's statement that he had only received \$50, (instead of \$100 as pretended,) as it was hardly probable that he would run the risk of abstracting \$50 before handing it to Morin. His Honour was inclined to believe from the corroborative testimony that this man only received \$50. The following day Morin came to Montreal from Repentigny for more money. Chaput, the clerk, stated that the money was brought out and counted, and put up in *rouleaux* of \$10, and packages of \$100, to the amount of \$500. There was no one present but Morin, Meunier and Chaput. After the money was put up, Morin went in behind the counter to draw a receipt. Just then Meunier's wife came in and said, don't forget the \$100 paid yesterday, which would make \$600. Chaput went away after seeing Morin begin to write. He did not see him put up the packages, he did not see the money in his possession, but he was certain of all the facts just narrated. Now one theory was that Morin went inside to write a receipt for \$500, and that when Madame Meunier

came in, he struck his pen through the "5" and wrote "600." It was evident from a careful examination that this receipt was first 50 or 500. On the other hand it was a little remarkable that of all the receipts of Morin, this was the only one in which the amount was not mentioned in writing, but in figures only. His Honour had to bear in mind that there had been a very serious mistake in the first place respecting the \$180, and that Meunier had attempted to charge this sum twice. He did not consider that this mutilated receipt was at all conclusive as evidence whereon to base a judgment of the Court. He must see whether it was sustained by the evidence of Chaput. Now, Chaput, besides the fact of his being in Meunier's employ, and of his being mixed up in the affair, had fallen into some contradictions. It also appeared that after his deposition had been begun, he left the *enquête* room, and went into the passage with Meunier. This was a gross impropriety in a witness. From this circumstance, and the fact of their being some peculiar evasions and contradictions in his testimony, the Court was not disposed to place implicit reliance in it. It would have been in Meunier's power to take Morin upon his oath, but he had not done so. The Court had refused to administer the judicial oath, as there appeared to have been a great deal of feeling exhibited in the case. Upon the whole, then, his Honour was inclined to think that there had been an error, he would not say there was fraud. With very great hesitation and difficulty, he had come to the conclusion that the plaintiff's case was made out, and that judgment must go for the amount claimed.

Piché, for the plaintiff.

Jetté & Archambault, for the defendant.

DONEGANI v. MOLINELLI, and E. *Contra*.
Statute of Frauds — Commencement of Proof—Tender.

MONK, J., said that this was a case which had given him a great deal of trouble, and it was one of those in which it was difficult for the Court to come to a decided opinion. A poor man named Molinelli came to Montreal and made the acquaintance of Donegani, who advanced him money from time to time in