

It was held by the Master in Chambers, in Pickerel River Improvement Co. v. Moore, 17 P. R. 287, that where the action was brought under the first part of sec. 42 of the Act (now sec. 44) for "double tolls," it was an action for a penalty, and discovery was refused. But the present action is not under the first part of sec. 44 claiming "double tolls," and thus seeking to penalize the defendants; but is brought under the last part of that section to recover as damages "the tolls computed at the rate of 81 cents per 1,000 feet board measure on 425,155 feet of timber, being the tolls fixed by the Commissioner of Crown Lands, being the difference between the 2,000,000 feet and the said 1,575,845 feet, the quantity actually passed over the said works by the defendants."

Plaintiffs, in order to recover, must shew that defendants, knowingly or wilfully, falsely returned a larger quantity of timber than it was their intention to pass over the works, and the only source from which that evidence can be obtained would be by an examination of an officer of the company and a production of the company's books.

As it is clear that the action is not brought to recover a penalty, the order is right, and the appeal must be dismissed with costs in the cause to plaintiffs in any event.

ANGLIN, J.

FEBRUARY 1ST, 1905.

TRIAL.

# REX v. BANK OF MONTREAL.

*Bills and Notes—Forged Cheques—Crown—Forgeries by Clerk in Government Department—Liability of Bank—Duty of Customer to Check Accounts—Deposit of Cheques in other Banks—Liability over—Estoppel—Alteration of Position.*

Action to recover \$75,705, the aggregate amount of 12 cheques forged by one Abendeus Martineau, a clerk in the Department of Militia at Ottawa. These cheques were drawn upon the defendants, and were paid by them and charged against the account of the Receiver-General of Canada. The Quebec Bank, the Sovereign Bank, and the Royal Bank, were brought in by defendants as third parties, and relief over against them claimed, the forged cheques having been deposited by Martineau in these banks at Ottawa, and having been presented for payment to defendants by or through these banks.