



# MONTHLY LAW DIGEST

## AND REPORTER.

VOL. I.

JANUARY, 1892.

No. 1.

ACCEPTANCE OF NOTE—See Payment.

ACCESSORY OF THING SOLD—See Sale S.

**ACCOUNT**—ACTION FOR ACCOUNT OF MONEY PAID—RECEIPT—ERROR—PAROL EVIDENCE—Art. 1234—Art. 14 C; C. (Quebec.) Findings of Fact.

S. brought an action to compel V. to render an account of the sum of \$2,500 which S. alleged had been paid on the 6th Oct., 1885, to be applied to S.'s first promissory note maturing, and in acknowledgment of which V.'s book-keeper gave the following receipt:

"Montreal, October 6th, 1885. Received from Mr. D. S. the sum of two thousand five hundred dollars, to be applied to his first notes maturing, Mr. V., Fred"; and which V. failed and neglected to apply. V. pleaded that he never got the \$2,500, and that the receipt was given in error and by mistake by his clerk. After documentary and parol evidence had been given, the Superior Court, whose judgment was affirmed by the Court of Queen's Bench, dismissed S.'s action.

On appeal, to the Supreme Court of Canada *Held*, (1) that the finding of the two courts on the question of fact as to whether the receipt had been given through error should not be interfered with.

(2) That the prohibition of Art. 1234 C. C. against the admission of parol evidence to contradict or vary a written instrument is not *wordre public*; and that if such evidence is admitted without objection at the trial, it cannot subsequently be set aside in a court of appeal.

(3) That parol evidence in commercial matters is admissible against a written document to prove error. *ÆTNA INS. Co. v. BRODIE*, 5 Can. S. C. R. 1, followed. Appeal dismissed with costs. *Schwarsenski v. Vineberg*. Supreme Court of Canada, June 22, 1891.

ACCOUNTING—See Partnership 2.

ACTION FOR DAMAGES—See Damages.

ACTION AGAINST STOCKHOLDERS—See Corporations 4.

ATTAINDER—See Confiscation.

**ADMIRALTY**—SALVAGE.

D, a tug undertook to tow a ship I. out of the harbour of Quebec to the foot of the Traverse for \$70. When they had proceeded part of the way the weather became bad, and the ship anchored and D. returned to the harbor. During the night the ship dragged her anchors and went ashore. B. another tug, went to the ship in the morning, and shortly afterwards D. returned to her, and after some bargaining the ship agreed to pay each of them \$600 to pull the ship off and tow it back to Quebec. On a claim being made by D. and B. for the above amount, it was resisted on the ground that it was obtained from the master of the ship when he was alarmed for her safety, and that the claim was an exorbitant one, and the tugs should be paid only what the service was reasonably worth.

*Held*:—That D.'s claim was a claim for salvage and not towage, but that