

Oct. 31.

## LOVELL v. CAMPBELL ET AL.

*Principal and Agent—Liability of Agent—Solidarité.*

Four persons, assuming to act as representatives of the Seigniors of Lower Canada, ordered certain work to be executed for them. The names of their principals, individually, were unknown, and the agents did not act under a power of attorney.

*Held*, that the agents were personally liable, inasmuch as they did not disclose the names of their principals, by producing and acting under a power of attorney; but that they were not liable *in solido*.

The facts of this case are sufficiently set forth in the judge's remarks.

MONK, J. It is unnecessary to say that this case has given me a good deal of trouble, but at length, after an examination of all the pleadings and evidence, I have arrived at a final decision. It appears that the Seigniors of Lower Canada, in 1854 or 1855, becoming very much alarmed about their rights, met in Montreal, and agreed to take defensive measures against the Legislature of the country, and afterwards against the probable decision of what are known in history as the Seigniorial Courts. For the purpose of concentrating their efforts, they selected four gentlemen of extraordinary ability, Messrs. Campbell, Wurtele, Papineau and Pangman, who called themselves, and were generally known as the Seigniorial Committee. These gentlemen acted for all the Seigniors of Lower Canada; they had a representative capacity, but that capacity was not made known by any power of attorney. The precise nature of their powers, however, is pretty clearly defined by the circulars printed by Mr. Lovell, and distributed by the committee. One of their powers seems to have been the retaining of counsel. Messrs. Dunkin, Cherrier, and Mackay, gentlemen of great ability, were retained by the committee. The factums prepared by counsel were printed, and for these factums, Mr. Lovell makes a charge in his account against the Seigniorial Committee. The account also contains a variety of other items. It is admitted on the part of the defendants that the work was done, and that the charges are fair and reasonable. Two small sums have been paid on account, but a

balance of \$1100 remains due, and it is for this balance that the plaintiff brings the present action against the four gentlemen composing the Seigniorial Committee. The defendants have pleaded separately. Mr. Campbell says the Seigniorial Committee are not responsible; Mr. Wurtele alleges that he made certain payments on account. But Mr. Papineau has put in a special plea, saying that he had no interest in the matter; that he was not a Seignior, and merely acted for his father. But it appears that he did not take the quality of an attorney of any one; he acted like the others as a Seigniorial representative.

Upon the issues thus joined, the case comes up for adjudication. The evidence adduced is voluminous, and we have to consider the position in which these gentlemen stood with respect to the plaintiff. As I have already observed, there is no difficulty about the value of the work; the only question is whether the defendants are liable; or whether the plaintiff must bring his action against the Seigniors of Lower Canada. Now, I find in the circulars printed by order of the Seigniorial Committee, that these gentlemen speak of their responsibility, and they seem to say that their authority extended to the retaining of counsel, and expenses connected therewith. In fact, the gentlemen composing the Committee acted imprudently: they went on getting circulars and factums printed, and retained counsel, without taking the precaution of getting their constituents to advance the necessary funds. Mr. Wurtele was appointed Secretary; and in the circular letters issued by him, frequent appeals are made to the Seigniors to contribute, but they do not seem to have paid much attention to them. [His Honour read two of these letters.] While the work was being executed, the members of the Committee were in constant communication with the plaintiff. Mr. Wurtele was frequently at his office, and authorized him to incur the expense. It appears from the evidence that when Messrs. Dunkin, Mackay and Cherrier were ready with their factums, and desired to have them printed, the plaintiff said he would like to have some authority to do the work, as counsel were not liable. Accordingly, on the 30th December, 1855, the following