

# Court of Queen's Bench.

## APPEAL SIDE.

NO. 48.

JOHN J. DAY,

(Defendant in the Court below.)

APPELLANT,

AND

JAMES SCULTHORP,

(Plaintiff in the Court below.)

RESPONDENT.

## THE RESPONDENT'S CASE.

This is an Appeal from a Judgment of the Superior Court at Montreal, rendered on the 29th day of February 1860, in favor of the Respondent, in an action brought by him against the Appellant.

The action in the Court below was to recover the amount of a Promissory Note for \$1000, dated 22nd August 1859, made by Wm. Smyth & Co., payable three months after date to their own order, and by them endorsed to the Appellant who endorsed the same to the Respondent, and interest thereon and costs of Protest.

To this action the Defendant pleaded as follows:—

And the said Defendant for Plea to the action and *demande* of the Plaintiff, saith, that he expressly denies the allegations of the said Plaintiff's declaration except in so far as the same are hereinafter admitted, and says, that true it is, that the said Wm. Smyth & Co., in the Declaration of the Plaintiff in this cause filed mentioned to wit: William Smyth of the City and District of Montreal, gentleman, then Leather Merchant, trading by the name of Wm. Smyth & Co., made the Promissory Note mentioned in the said Declaration of the said Plaintiff, and signed and endorsed the same with the said name of Wm. Smyth & Co., and delivered it to him the said Defendant; but it is not true, but on the contrary it is expressly denied, that he the Defendant then and there endorsed the same and delivered it to the said Plaintiff as in the said Declaration mentioned. And the said Defendant in fact saith; that he the said Defendant endorsed the said Promissory Note for the accommodation of the said William Smyth, and delivered it so endorsed to the said William Smyth to enable the said Wm. Smyth to get the same discounted at the Molson's Bank or raise money thereon for his own benefit, through the said Plaintiff, but, with the understanding and upon the express condition, that the said Plaintiff should first endorse the same by putting his name above the name of him the said Defendant on the back of the said note between the name of the said Wm. Smyth & Co., and that of the said Defendant, so as that the said Plaintiff should be primarily liable as endorser to the said Defendant, should the same not be paid at maturity by the said Wm. Smyth. That for the purpose of enabling the said Plaintiff so to endorse the said note, he the said Defendant, when he so endorsed the same, left a space between the signature or endorsement of the said William Smyth & Co., on the back of the said note, and the signature or endorsement of him the said Defendant. That having, upon the condition and with the understanding aforesaid, so endorsed and delivered the said note to the said William Smyth, the said William Smyth afterwards delivered the said note to the said Plaintiff, with the understanding and upon the express condition, that he the said Plaintiff was to and should put his name above the name of the said Defendant on the back of the said note