SUPERIOR COURT.

MONTREAL, Dec. 15, 1880.

COURT es qual. v. STEWART.

Personal liability where a particular quality is added to signature.

A person who adds the word "Trustee," or other quality to his signature, is personally bound thereby, unless he can show that he signed for a principal, or for an estate, bound by his signature.

JOHNSON, J. The plaintiff here sues as assignee, under the insolvent law, of the Mechanics' Bank, and the action is to recover from the defendant the amount of an undertaking he had with the Bank, and which appears in the shape of a letter to the cashier as follows:—

"Dear Sir,—Please place to the credit of the estate N. Van Alstyne & Co. the enclosed demand note for $700, with the note of Van Alstyne for same amount as collateral. In consideration of this discount I hereby promise to place you in funds for the amount from the first sales of the stock of castings now on hand. Yours, &c., A. B. Stewart, Trustee."

This letter referred to the note of Norman Van Alstyne at four months, for $700, made in the defendant's favor as trustee of the estate of N. Van Alstyne & Co., and by him endorsed, and also to the demand note of the defendant himself to his own order and which he likewise endorsed. The declaration avers an understanding between the defendant and the bank, that payment of his demand note should not be asked until the maturity of the other note. It then avers a demand of payment and protest of the Van Alstyne note, and the personal liability of the defendant, notwithstanding that he put trustee after his signature. The pleadings raise substantially the question that arose in the case of *Brown et al.* v. *Archibald et al.**, in which I held that the defendant was personally liable. That judgment was confirmed in appeal with two Judges dissenting there, so that in the result, there were four Judges against the pretension now raised by the defendant, and two in his favor. On reading the report of the case in appeal, I feel myself bound by the reasoning of Mr. Justice Cross and Mr. Justice Ramsay. In the present case there was a composition by Van Alstyne & Co. with their creditors, following on a previous insolvency, and a trustee, as they called him, was named, *i. e.*, the defendant, just as was done in the case of Archibald and the others. If by the deed of composition in that case the so-called 'trustees,' had no power to bind the estate, the present defendant, Stewart, certainly has none. It belonged to the creditors already, and Stewart only had a supervision of it for their benefit. The leading principle maintained in *Brown* v. *Archibald* is that *the defendant is liable personally unless he can show that he signed as agent for a principal who was bound by the signature.* The proof in the present case is that Stewart gave an undertaking to apply certain proceeds to pay the note. These proceeds were realized, and he applied the money differently. Judgment for plaintiff.

Maclaren & Leet for plaintiff.

Abbott, Tait, Wotherspoon & Abbott for defendant.

* 1 Legal News, 327; 3 Legal News, 42; 24 L. C. J. 85.

COURT OF QUEEN'S BENCH.

MONTREAL, Dec. 22, 1879.

MONK, RAMSAY, TESSIER, CROSS, JJ., ROUTHIER, J., *ad hoc.*

HUDON et al. (plffs. below), Appellants, and RIVARD (T. S. below), Respondent.

Universal usufructuary legatee—Personal liability—Procedure.

The appeal was from a judgment of the Superior Court, Montreal, March 31, 1876, rejecting the appellants' contestation of the declaration made by the *tiers saisi* Rivard.

In appeal, the judgment was reversed, the Court holding

1. A defendant condemned as universal usufructuary legatee of her deceased husband is in the position of a universal legatee, and is personally bound to pay the amount of the judgment.

2. A garnishee who is summoned to declare what he owes to a defendant designated in the writ as a universal usufructuary legatee, is bound to declare what he owes to such defendant personally, as well as what he may owe