this reason, maintains Kearney's petition with costs against Logan here, and in the Bankruptcy Court.

J. M. Glass for plaintiff.

P. J. Coyle for defendant, petitioner.

SUPERIOR COURT.

MONTREAL, Nov. 7, 1879.

WATSON v. THOMPSON.

Master and Servant—Negligence—Condonation by employer.

MACKAY, J. This was an action for $245 wages from 20th September, 1878, to 10th January, 1879. Up to 1st March, 1871, the plaintiff was in Thompson's service under one agreement, and has been since under a new one at $800 a year, payable weekly, from that time till 10th January, 1879. The pleas are that defendant discharged plaintiff on the 10th January, 1879; plaintiff's duty was to receive money and pay defendant's employees; that an iron safe, and burglar lock was furnished plaintiff; that on the 19th or 20th of April, 1877, the plaintiff received of defendant's money, $545, $510 of which were in plaintiff's hands. By plaintiff's imprudence this was lost or stolen; that defendant has been damaged, and the plaintiff must indemnify him; that the demand of plaintiff is more than extinguished by compensation to defendant, the amount that ought to be allowed defendant more than perfectly paying plaintiff, in fact, leaving plaintiff (after the compensation even) largely debtor to defendant. The third plea invokes an entry made in the books by plaintiff of 21st April of the larceny, and profit and loss is charged with it, without defendant's knowledge, &c. The last plea of defendant is that plaintiff's services were of no value to defendant, but in fact damaging to him in a sum exceeding $1,000. The plaintiff's answers to the pleas are that in April, 1877, the defendant had stolen from him from his safe the money referred to, but plaintiff was not, responsible; that defendant knew him not to have been blameable, and therefore did not attribute the theft and loss to any fault of his, but continued to pay him his wages as usual; and that plaintiff, in fact, till he left defendant's service, had his authority to sign for him all kinds of commercial paper, &c.

There is no debate about the fact of defendant having had stolen from him the $510. The loss occurred on a Saturday. Three gentlemen entered Thompson's shop. One of them drew off Thompson, another drew off Watson; the third took Watson's tin box out of the safe, containing defendant's $510. The loss having occurred, is it seen that plaintiff is blameable for it, and was in culpable negligence? There are appearances against plaintiff; yet looking at all the circumstances surrounding and following upon the event, he seems to have something to say against defendant, now charging him with the loss and damages resulting from that larceny. From April, 1877, date of the larceny, the plaintiff and defendant have been on their usual terms with one another till January, 1879. In April, 1877, the amount stolen was entered in the defendant's books to debit of profit and loss. Defendant in his evidence would have it that he did not know of this, yet he admits knowledge of an entry to like effect in the men's time book. Notwithstanding the larceny, the defendant paid plaintiff his wages, as if no larceny had been, save only that a balance was unpaid at 10th January, 1879. Condonation often takes place of *quasi délits; remise* it is called in French; it may be express, or implied. Has there been *remise* here by defendant? The defendant's own evidence goes to support the affirmative; for he says he had no intention to charge the plaintiff. We see then his intention, and plaintiff's entries in defendant's books, one of them at any rate known to defendant, by which plaintiff in a way accepts defendant's benevolence. In all 1877 and 1878 the defendant's conduct implied that he did not blame plaintiff. Culpable negligence is more a question of fact than of law. If plaintiff was guilty of it, would defendant have made the *remise* to him (even in intention) that he appears to have made? Under the circumstances I find against culpable negligence, and that defendant is too late now in charging plaintiff with it, and judgment must be for plaintiff.

Hutchinson & Co. for plaintiff.

F. W. Terrill for defendant.