

number of promissory notes were made and signed by the firm of A. J. Maxham & Co. in favor of the said Pierre Chartré, and by him endorsed to the said Bank including the promissory note declared upon in this case, but it is not true that the said Quebec Bank, by and through the said assignment referred to in this interrogatory, received the money from the Government or Commissariat Department referred to in the said letter, but, on the contrary, the monies that were received from the Commissariat Department under the beef contract were not received for Chartré by the Quebec Bank under that contract, but on the contrary they were received by the defendants in this cause by their directing, and more especially by Andrew John Maxham one of the defendants directing the said monies under the beef contract to be paid to Chartré, by having them deposited to the credit of the latter with the plaintiffs, to be drawn out by Chartré with the intention of receiving the same from Chartré to take up the notes of A. J. Maxham & Co., given as mentioned in the said letter in relation to the beef contract. The following is the statement required by this interrogatory: "Memorandum of A. J. Maxham & Co.'s notes in favor of P. Chartré, discounted by the Quebec Bank under letter of the 8th October 1853 from A. J. Maxham & Co. to the Quebec Bank." (This statement showed that, from the 8th of October 1853 to the 1st September 1859, 27 notes had been discounted, to the amount of \$38,535.45. Of these all had been paid with the exception of 5,—4 due on the 4th October 1859 for \$4000, and the note for \$2000 sued upon in this cause.) The following is a statement of money received by Pierre Chartré from the Government, deposited to his credit, subject to his order, by direction of A. J. Maxham & Co. (This statement showed that \$34,152.47 had been received.) There were no monies in the Quebec Bank received from Her Majesty's Government, at the maturity of the note sued on in this cause applicable to it, but there is a sum at the credit of Chartré of \$1539.50, applicable, as far as it will go, to take up the notes that have never been paid, as stated in the foregoing statements. At the time of the maturity of the note sued upon in this cause there were no funds in the Quebec Bank applicable to the payment of it because the balance due on the notes which have never been paid to the Bank is, as stated in the above statement, \$8000, as acknowledged in part in a letter which was received from A. J. Maxham & Co. by the Bank, of which the following is a copy:

"Quebec, 5th October 1859.

To the President and Directors
of the Quebec Bank.

Gentlemen,—In consequence of Mr. Pierre Chartré having drawn from the Bank the proceeds of the money received from the Government contract, and appropriating that money to himself and not to the retirement of our notes amounting to \$4500 due yesterday, we beg to state that we are unable for the present to meet them, and request you will retain such sums or sums as he may have to his credit, received by you from the Commissariat on account of his endorsements on said paper remaining in your hands.

We are, Gentlemen,

Your obedient servants,
A. J. Maxham & Co.

It is true that A. J. Maxham & Co. have obtained possession of the notes due on the 1st—4th October 1859, amounting to \$1000, by overdrawing their account with the plaintiffs, without the knowledge or consent of the Bank, and by mistake, but neither these notes or the note sued upon have ever been paid to the Bank, the plaintiffs in this cause.

The defendants did not declare whether they availed themselves of the above answers.

CHARLES GETHINGS, Esq., was the first witness called on behalf of the defendants. Examined by Mr. Andrews, he said: I am the Cashier of the Quebec Bank, and I have been so for many years. I am not aware that the defendants Maxham & Co., in the month of October, 1858, applied verbally to the Bank to make advances to Pierre Chartré, one of the defendants, upon the security of their paper, but an application in writing to that effect was made by a letter which has been produced in this cause by the plaintiffs, and the applica-

tion was submitted to the Board of Directors, and was assented to by the Board. (The letter of the 8th of October 1858, was read to the jury) Subsequently to this I became a party to the deed of assignment now shewn to me. [The assignment was here read. After stating the contract with the Commissariat and Chartré's inability to carry out the same without advances from the Bank of such sums "as he the said Charles Gethings shall deem necessary and be warranted in making," it continues in these words: "And, whereas, in order to protect, indemnify and bear harmless the said Charles Gethings, from and against any loss whatever that may happen by means of such advances, he the said Pierre Chartré did, as by these presents he doth, transfer, assign and set over unto the said Charles Gethings accepting hereof for and on behalf of the said Quebec Bank, all the right, title, claim, interest property and demand of him the said Pierre Chartré in and to the aforesaid in part above recited contract or agreement. To have and to hold the aforesaid rights, claims and demand of him the said Pierre Chartré in and to the aforesaid contract hereby assigned and intended so to be unto the said Charles Gethings for and during the aforesaid period of one year. The present assignment is thus made and entered into by and on the part of the said Pierre Chartré for and in consideration of the sum of five shillings lawful current money of Canada, which the said Pierre Chartré hereby acknowledges to have received from the said Charles Gethings at the time of the execution hereof, and also upon the express understanding and condition that the said Charles Gethings shall or will not be in any way held or bound to carry out and fulfil the aforesaid in part above recited contract, nor any of the conditions thereof, but that the said Pierre Chartré shall and will carry out and fulfil the same in his own name, in manner as if these presents had never been made and entered into. And for the full effect of the present assignment the said Pierre Chartré doth hereby put, substitute and subrogate the said Charles Gethings in all his right, title, claim, interest and demand in and to the aforesaid contract in part above recited. And the said Pierre Chartré doth further by these presents make, name, constitute and appoint the said Charles Gethings to be his true and lawful attorney irrevocable with full power and authority for and in the name of him the said Pierre Chartré to draw, accept take, recover and receive all and every the sum and sums of money now due and which may hereafter become due owing and payable to him the said Pierre Chartré by the said Thomas William Goldie or his successor in office under the aforesaid in part above recited contract, and upon receipt of all sums of money under these presents to give good and valid receipts releases and discharges, hereby ratifying and confirming and promising to ratify and confirm all and whatever the said said Charles Gethings shall lawfully do or cause to be done in the premises by virtue hereof." After the passing of this document I gave a receipt to the Commissariat for the monies which became due on Chartré's contract, and