condamne le dit défendeur à payer à la dite demanderesse la somme de $16,263.13, cours du Canada, pour les causes et raisons énoncées dans la déclaration, avec intérêt sur icelle à compter du 15 Août, 1876, et les dépens *distraits*."

The appeal was from the above judgment, on the ground that Hood was in no way liable for the draft, and also insisting that if he were liable, the amount received by the Bank from the proceeds of the beef should have been deducted from it.

Sir A. A. DORION, C.J., said it was evident that Hood had never bound himself to pay the draft. The Bank of Toronto had security on the meat which was in its possession. What was transferred to Hood was the margin that might remain after the Bank had been paid. There was no question of fraud here. His honor, therefore, was of opinion that the Court below was wrong in holding Hood liable for the amount of the draft. The judgment being erroneous, must be reversed.

MONK, J., dissenting, thought that Hood had made himself liable, and he added that Judge Tessier (who was not present at the delivery of the judgment) concurred in this view.

RAMSAY, J. One McMullin, not a party to this suit, carried on business under the name of the "North American Packing Company." He made a contract with a person of the name of Pupin, of Paris, France, to deliver to him 150,000 kilos. of boiled beef. In the winter of 1876 he shipped about 50,000 kilos., which at the contract price would amount to $16,143.36. On the security of the bill of lading of this shipment the respondents discounted the draft of "The North American Packing Co." on Pupin for $13,943.30. Pupin declined to accept the draft, the beef not being of the quality required, and it was sold for £2,054 15s 3d sterling, which was insufficient to pay the draft held by respondents and the expenses connected with the sale. While the result of this transaction was unknown, on the 27th March, 1876, McMullin made a deed with appellant which sets up that he (McMullin) "had commenced a certain business for the packing, canning, and sale of meats in a portable shape, under the name of "The North American Packing Company," and that the appellants "agreed to purchase the said business." The deed then goes on to transfer, 1st. The lease of the premises; 2nd. All the fixtures and plant of the Company, and all the debts due to the company, even those not specially enumerated; "3rd. All existing contracts which have been made by the said Edgar McMullin, either in his own name or in the name of The North American Packing Company, with any person whomsoever, for the furnishing or sale of packed or canned meat, and especially that certain contract made with one P. Pupin, of Paris, France, as detailed in the correspondence between him and the said Edgar McMullin and one Charles N. Armstrong, which has been transferred before the passing of these presents to the said Andrew W. Hood;" and "4th. The good will of the business." The consideration for this transfer is the sum of $42,500, on account of which the said Andrew W. Hood hath paid at and before the passing of these presents the sum of $12,848.26, and the balance, namely, $29,651.74, "the said Andrew W. Hood undertakes to pay the same to the discharge of the liabilities of the said Edgar McMullin, mentioned in the schedule hereunto annexed, marked B."

Among the debts due to the Packing Company especially enumerated is the balance presumed to be due by Pupin on the 50,000 kilos less the draft, that is to say, the sum of $2,206.06. The deed was also supplemented by a schedule B, setting forth the debts of the Packing Company, which appellant was to pay, and which amount to exactly the balance due of the consideration money, that is the sum of $29,651.74. Schedule B makes no mention of any liability on the 50,000 kilos. of beef already sent to France, and in fact no loss, but, on the contrary, a gain was anticipated. It further appears that the appellant took possession and control of the business of the Packing Company, and the respondents specially aver in their declaration that the appellant mixed himself up and took part in the settlement of this particular matter. By the conclusion of their declaration the respondents demanded $16,263.30.

The pretensions of the plaintiffs-respondents are two-fold. First, that the defendant purchased a total business with all its profits; that he specially acquired all "existing contracts," that among these existing contracts was the contract partly executed with Pupin;