

the defendant assigned as alleged, and that his assignee converted his estate, and paid all his creditors, including plaintiff, at equal rate. It was the defendant's brother who bought from the assignee, but all was above board, and managed well by the assignee for the creditors, who have received, I believe, as much as could have been expected out of such a bankrupt estate. The sale was after a meeting of creditors, but the plaintiff was not at the meeting. He builds up upon this a little. A discharge was signed by the creditors and by plaintiff's clerk in Montreal in the plaintiff's absence from the city. The clerk was the highest servant in the plaintiff's office; his book-keeper, attending to the general business, he says. He did not sign before consulting Mr. McLachlan, a friend of the plaintiff, who advised him to sign. Afterwards this clerk, Mr. Bryan, was urgent for his master's dividend and got it, by a cheque to the order of the plaintiff. The composition sum was forty-five cents in the dollar. The clerk promptly wrote his master's name on the cheque, drew the money, and advised his master in Ontario on the 11th of July. The plaintiff, examined by me, admits this, but says "he was travelling night and day, and lost and forgot it." He is asked by his own counsel: "Did the letter from Bryan make any mention of money?" to which he answers: "Nothing whatever. There was nothing in the letter except that he said he was trying to compromise." Immediately afterwards he is asked by defendant: "In the letter did he say that he had signed this composition?" to which he answers, "Yes. He said he had signed the composition for forty-five cents." According to all that is usual, was not that informing the plaintiff that he, Bryan, had received the composition sum and signed? I think it was. What was plaintiff's conduct? Did he blame his clerk? No; yet several times wrote to him afterwards from Ontario, and he has had the benefit of the money that the clerk got at the signing of the composition deed. Upon his return to Montreal in August, the plaintiff writes to defendant expressing surprise to hear that the latter has "compromised, or endeavored to compromise" with his creditors. That is plaintiff's expression. He charges the defendant in the same letter with having paid his (plaintiff's) book-keeper at that rate, but I cannot agree to any such arrangement,"

says the plaintiff, and "you must pay the balance at once, or I shall place the matter in the hands of my lawyers." Observe, he does not say that things must be put back into the position in which they were before. I cannot consider this fair treatment of the defendant. The plaintiff ought promptly to have repudiated *in toto* his clerk's agency if disapproving of it; but he would shape a course peculiar; express surprise at defendant's treaty with his clerk, repudiate in part, but not for the whole; accept all benefit, but repudiate all burden, return no money and shape an account between plaintiff and defendant, mere arbitrary, crediting defendant as with a *payment on account*, payment never made by defendant, and debiting him the difference. This treatment of defendant cannot be approved. I see the acts of plaintiff's clerk sufficiently ratified by the plaintiff. There are divers kinds of ratification.

The action is dismissed.

E. McKinnon for plaintiff.

Macmaster, Hutchinson & Knapp for defendant.

SUPERIOR COURT.

MONTREAL, April 1, 1881.

Before TORRANCE, J.

In re PATRICK GRACE, party expropriated, and THE GOVERNMENT OF THE PROVINCE OF QUEBEC, expropriating, and JOSEPH DUHAMEL, *distraignant*.

Costs—Expropriation—43-44 Vic. c. 43, s. 20.

In this matter, Patrick Grace had been expropriated, and an award of \$2,470 made in his favour for land taken. His attorney now made application that his bill against the party expropriating be taxed under 43-44 Vic. c. 43, s. 20.

TORRANCE, J., before whom the petition came in chambers, conferred with his brethren Mackay and Jetté, J. J., and decided to allow the fees of a contested bill of costs in a first class suit, including cross-examination (if any) of witnesses over five (44 of Tariff), besides disbursements and costs of the petition. The award had given \$600 more than was offered.

J. Duhamel, petitioner.

De Bellefeuille, for government.

Erratum.—In *Lefavre v. Belle* (p. 106) the headline, "*Before TORRANCE, J.*," was inadvertently omitted.