tive jusqu'à la date des offres réelles faites au défendeur le six d'avril 1882, par le ministère de Mtre L. N. Dumouchel, notaire, laissant une balance de $24,848, avec intérêt, etc.

Bonin, for the plaintiff.

Lacoste & Co., for the defendant.

SUPERIOR COURT.

MONTREAL, November 30, 1883.

Before JOHNSON, J.

GRAVEL v. HUGHES *es qual.*

Trespass—Responsibility of employer for fault of person under his control.—C. C. 1054.

An employer or parent is responsible for a trespass committed by his children or by persons employed by him or under his control, where he fails to establish that he was unable to prevent the act.

PER CURIAM. The defendant is sued personally and as curatrix to her interdicted husband, for a trespass committed by her and her servants on certain lots of land possessed by the plaintiff under permission of the owners, and used as grazing land for his cows, he being a milkman living near the city. The defendant answers the suit by alleging that she also had possession, and under a permission of the same kind, of a number of lots in the same locality, and which were not divided or distinguishable from those used by the plaintiff.

The difficulty in the case is to ascertain precisely what was possessed by the plaintiff, and which he had an exclusive right to use as grazing land. These lots are numbered, and witnesses who are neighbors, and well acquainted with the place, were heard before me, and proved to my satisfaction that the defendant, through her sons, committed the trespass complained of by driving off plaintiff's cows and putting their own cows there. It was urged that the evidence did not show the trespass by the sons to have been authorized by the mother; but there can be no doubt that the sons who lived with their mother, had no other interest or connection with the matter but as her servants, and under Art. 1054, C. C., she is responsible, unless she proves that she could not prevent them. Now, so far from proving anything of that sort, it is shown here, and not contradicted, that when she was notified by the plaintiff of his exclusive right to the grazing, she replied by assaulting him, and the whole case not only repels the idea of the boys having acted on behalf of any other than their mother, but she and she alone is the person who pretended to have any counter right to that of the plaintiff. She had a permission, no doubt, at one time to use some of these lots from one Jobin, but none of Jobin's lots were in the limits fenced by the plaintiff. On the whole facts therefore I find for the plaintiff.

As to the damages, there is some uncertainty as to the number of cows that were driven off the land, and the time the plaintiff was deprived of the use of it. One hundred and fifty dollars are asked as for the loss of milk from ten cows; on the other hand, it is sworn that the place could not have fed more than three cows. It is certain, however, that in a way it did feed or half feed more than that. I give $50 damages, and costs as of action brought.

Duhamel & Rainville for plaintiff.

E. Roy for defendant.

COURT OF REVIEW.

MONTREAL, November 30, 1883.

Before TORRANCE, DOHERTY and LORANGER, JJ.

DUBUQUE v. DUBUQUE.

Voluntary deposit—Evidence—Judicial admission.

An admission by the defendant, under oath, that he received a voluntary deposit, but had delivered it as requested, cannot be divided; and verbal evidence is not admissible to contradict the accessory statement of delivery, in a case where proof of the deposit could not be made by testimony.

The judgment inscribed in Review was rendered by the Superior Court, Montreal, Rainville, J., April 30, 1883.

The action was by one brother against another, to recover the sum of $125 alleged to have been given by plaintiff to defendant to be delivered to their father, Julien Dubuque. The defendant admitted under oath that he had received the money, but had delivered it as requested. The plaintiff then produced the father as a witness, and asked him if he had received the money. The question was objected to and the objection maintained, and there being no further evidence the action was dismissed.

TORRANCE, J. There is no error here. 30 Demolombe, No. 532, gives this very case. Any other doctrine would be extremely dangerous. If the defendant were an unfaithful depositary, there is no legal proof of it against his statement, which cannot be here divided.

Judgment confirmed.

Duhamel & Rainville for plaintiff.

Robidoux & Co., and *Pagnuelo, Q.C.*, for the defendant.