Here, then, is a case where the plaintiff has suffered loss and damage caused by the animal of the defendant, who is responsible unless he prove that he is without fault. If he proves that, the plaintiff is without remedy against him. He does prove it, and, therefore, the remedy fails; but as to the costs, what is to be the rule? The damage is the result of that for which the defendant is *prima facie* responsible. The plaintiff had a right of action presumable by law. Is he, the plaintiff, who has suffered so severely, to be mulcted in costs payable to the defendant? I think not. It is a matter by law within the discretion of the Court, to be exercised, no doubt, on intelligible principle. It would be almost equally hard if the defendant had to pay the plaintiff's costs when the right of action existing *prima facie* turns out on investigation to be unsustainable. I therefore dismiss the action without costs.

Lareau & Co., for plaintiff.

Taillon & Co., for defendant.

SUPERIOR COURT.

MONTREAL, May 27, 1882.

Before MACKAY, J.

OGILVIE et al. v. THE QUEBEC BANK.

Bill of Exchange—Acceptance—Alteration.

When a bill has been accepted and delivered to the holder, the date of acceptance cannot be altered without the consent of all the parties to the bill.

PER CURIAM. This action is for the recovery back of a sum of money paid to the Bank by the plaintiffs, drawers of a bill dated Montreal, upon one Bunbury in Ontario, which bill the Bank discounted for the plaintiffs in March, 1877.

The bill was in its body made payable at the Standard Bank, Colborne. Bunbury accepted the bill. The acceptance was consummated on the 24th of March. The Bank, defendant, was owner of the accepted bill at maturity of the acceptance as made, but omitted to present for payment to Bunbury at the place appointed for payment when the acceptance fell payable, to wit, on 11th April. After that, the defendants' agent, the Standard Bank, which had neglected to present the bill for payment, procured Bunbury to alter his acceptance, changing its date and postponing its day for payment, so that, later, a protest was made (apparently in proper time), and the plaintiffs were notified of it. After this the defendants insisted upon payment of the bill, or draft, and costs of protest, and were paid by plaintiffs, but under reserve of their rights to recover back the money, as not legally due. The present suit is for the recovery back of the money with interest from time of its being paid.

The plea denies that the Standard Bank was agent of or for the defendants, and alleges that it was agent of the plaintiffs. It goes on to describe Bunbury as largely indebted to plaintiffs before and at the drawing of the draft, and insolvent, "and if any changes were in the acceptances, or protests, which defendants do not admit, and in any event cannot be responsible for," the same caused no loss to plaintiffs, that the plaintiffs have so acted with Bunbury, since his bankruptcy, in respect of this draft that they cannot maintain this action, &c.

It appears clearly that the draft or bill on Bunbury was discounted by defendants in the course of its business; after such discount it was property of the defendants; they, towards getting paid, sent it to the Standard Bank; the Standard Bank obtained, duly, the draft to be accepted by Bunbury once on the 24th March; that acceptance afterwards matured, but no presentation for payment was made, as ought to have been; the Standard Bank, seeing that it had been negligent, procured Bunbury to alter the acceptance, so as to make it read as made on the 31st March and its time for maturity fall later; no notice was given to the plaintiffs; afterwards, when, according to the altered acceptance, the bill fell payable by Bunbury, it was presented, protested, and notice given to plaintiffs.

On the 21st of April, 1877, an attachment in bankruptcy issued against Bunbury.

At the argument several points were raised applicable to condition of things other than exists in the present case; for instance, it was argued that a bank employed to make a collection at a distance was not liable for the negligences of subordinate agents necessarily employed towards such collection; that such subagents were to be held agents of the person employing the bank in the first instance, &c. But what have we to do with such things? Here the bill or draft was never placed in defendant's bank *for collection*. Again, it was said that Bunbury, having been insolvent all the