PETRY ET AL. *v.* CAISSE D'ECONOMIE.

Bank stock—Substituted property—Registration—Arts. 931, 938, 939 C.C.—Shares in trust—Condictio indebiti—Arts. 1047, 1048 C.C.

The curator, to the substitution of W. Petry, paid to the respondents the sum of $8,632 to redeem thirty-four shares of the capital stock of the Bank of Montreal, entered in the books of the bank in the name of W.P.G. in trust, and which the said W.P.G., one of the *grevés* and manager of the estate, had pledged to respondent for advances made to him personally. H.P. et al., appellants, representing the substitution, by their action seek to be refunded the money which they allege Rev. J. P., one of them, had paid by error as curator to redeem shares belonging to the substitution. The shares in question were not mentioned in the will of William Petry, and there was no inventory to show they formed part of the estate, and no *acte d'emploi or remploi* to show that they were acquired with the assets of the estate.

Held, affirming the judgments of the court below, per RITCHIE, C.J., and FOURNIER and TASCHEREAU, JJ., 1st, that the debt having been paid with full knowledge of the facts, the plaintiffs could not recover.

2nd, per STRONG and FOURNIER, JJ., that bank stock cannot be held, as regards third parties, in good faith to form part of substituted property on the ground that they have been purchased with monies belonging to the substitution without an act of investment in the name of the substitution and a due registratian thereof. Arts. 931, 938, 939 C.C. (PATTERSON, J., dissenting).

Appeal dismissed with costs.

Irvine, Q.C., and *Stuart*, Q.C., for appellants.

Hamel, Q.C., and *Fitzpatrick*, for respondents.

New Brunswick.] [June 22.

MCKEAN *v.* JONES.

Practice—Proceedings in equity—Parties.

C., who had a suit pending on certain policies of insurance, assigned to defendant all his interest in said suit and said policies, and being indebted to B. & Co., he gave them an order on defendant, directing the latter to pay B. & Co. the balance coming from the insurance claim after paying what was due to defendant himself. B. & Co. indorsed the order and delivered it to plaintiff, who presented it to defendant, and defendant accepted it by writing his name across the face. B. & Co. afterwards gave plaintiff a written document, stating that having been informed that the order was not negotiable by indorsement, in order to perfect plaintiff's title they assigned and transferred to him the order and made him their attorney, in their name, but for his own benefit, to collect the same.

The insurance monies having come into the hands of defendant, he refused to give plaintiff an account or pay what was due to him, but stated that prior claims had exhausted the money. In an action for an account and payment the defendant demurred, claiming that both C. and B. & Co. should be made parties. The demurrer was overruled and the same objection was raised in the answer. On appeal, the question of want of parties was the only one argued.

Held, affirming the judgment of the court below, STRONG, J., dissenting, that the question was *res judicata* by the judgment on the demurrer; if not, the judgment was right, as neither C. nor B. & Co. were necessary parties.

Appeal dismissed with costs.

A. G. Blair, and *Hazen*, for appellants.

Weldon, Q.C., for respondent.

Manitoba.] [Nov. 16.

BERNARDIN *v.* MUNICIPALITY OF NORTH DUFFERIN.

Contract—Corporation—Capacity to contract except under seal.

G., in answer to advertisement tendered for a contract to build a bridge for the municipality of North Dufferin, and his tender was accepted by resolution of the municipal council. No by-law was passed authorizing G. to do the work, but the bridge was built and partly paid for, but a balance remained unpaid for which B., to whom G. had assigned the contract, notice of the assignment having been given to the Council in writing, brought an action. This balance had been garnished by a creditor of G., but the only defence urged to the action was that there was no contract under seal in the absence of which the corporation could not be held liable. On the trial there was produced a document signed by G. purporting to be the