ment appealed from, and that such tender is insufficient ;

" Considering, therefore, that in the said judgment appealed from, to wit, the judgment rendered by the Superior Court sitting at Montreal on 31st of March, 1880, by which the action of the plaintiffs now appellants, was dismissed with costs, there is error ;

" The Court now here, proceeding to render the judgment which the said Court below ought to have rendered, doth condemn the defendants, now respondents, to pay to the appellants, plaintiffs below, the sum of $3,038.44, as the value of the said cargo of coal, according to the said Bill of Lading, with interest from the 3rd of September, 1879, at the rate of 6 per cent. per annum, and the costs incurred by the said plaintiffs, appellants, as well in the Court below, as in this Court (the Hon. Sir A. A. Dorion, Chief Justice, and Mr. Justice Ramsay dissenting).

The dissentient opinion of Mr. Justice Ramsay was as follows :—

RAMSAY, J. The appellants sued the respondents for the price of a quantity of coal, $810.05, on a special action setting up that Thompson, Murray & Co. were their agents for a long period, and that through them appellants sold to respondents the coal in question.

The respondents met this action by a plea in which they said they never knew appellants in the matter, that they bought from Thompson, Murray & Co., and that they were ready to pay them and were not bound to pay appellants.

It appears that in England a special action of this sort can be brought, even when there is a contract in writing, provided the contract be not under seal (Collyer on Partnership, 653); and the contract may probably be produced in proof. But the action cannot be brought *on* the writing : (Dunlap's Paley Ag., No. 324, Note A.) It seems to me that such a rule is contrary to strict principle, and English writers know well enough that the rule of the civil law differs from the rule of the common law (Story, Agency, 164). We must be governed by the law of France on the point. It seems perfectly clear that under our system no such action can be brought. Many authors hold that not only the principal cannot sue, but he cannot be sued. It was argued that this was true, but that our code had laid down a rule that necessarily implied that the principal must have such an action. Article 1727 C. C. having given to the purchaser the right to sue the undiscovered principal to force him to fulfil the obligations of his agent, the reciprocal action must lie. But I do not see that this follows, and in France many writers held with Pothier that the purchaser might go past the agent and attack the principal directly. (See Troplong, Mandat, 435 and following, and the decisions he reviews.) The principle is this—a legal relation is created by equity between the undiscovered mandator and the other party, and not by the contract. There is no inconvenience in his proceeding without calling in the mandatary, or at any rate it is an inconvenience only to himself. But if the undiscovered principal sues the other party without putting the mandatary *en cause*, the defendant is liable to another suit. No evidence, not even an admission, would put him in the position he has a right to be in. He is entitled to be enabled to plead the *res judicata*. It has been said, if the agent is insolvent can't you follow your property? I think you can, but that case involves different principles ; and the necessity of putting the interested parties *en cause*, equally exists.

Judgment reversed.

Davidson, Monk & Cross for Appellants.
Beique & McGoun for Respondents.

COURT OF QUEEN'S BENCH.

MONTREAL, September 20, 1882.

MONK, RAMSAY, TESSIER, CROSS & BABY, JJ.

THE CANADA PAPER CO. (defts. below), Appellants, and THE BRITISH AMERICAN LAND CO. (plaintiffs below), Respondents.

Sale of stolen effects—Trading in similar articles—C. C. 1489.

A farmer selling cordwood from his land is a trader dealing in similar articles within the meaning of C.C. 1489.

Wood cut and sold from land held under a "location ticket" containing a prohibition to cut wood, is not stolen property within the meaning of the above article.

The appeal was from a judgment of the Circuit Court, at Sherbrooke, condemning the appellants to restore and deliver over 130 cords of wood, or to pay $159.50 as the value thereof.