

At the same time it is pretended that this sum could not be so applied, because it had been placed in Chartré's account, and was subject to his control. Was it consistent with this pretension that the Bank should require an assignment of the monies due to Chartré by the Commissariat Department, by means of a notarial instrument, as well as a transfer of the policy of insurance, and that they should take every other possible means of protecting themselves against loss. Why were all these precautionary measures adopted? The Bank had taken the trouble to enter into this transaction by means of a special agreement, and had even deputed their own officers to receive the monies coming from the Commissariat, which were to be applied in repaying the Bank the monies advanced to Chartré, and yet having received these monies, they pretended that they never looked upon these proceedings in any other light than an ordinary banking transaction, considering Chartré merely as a depositor of the Bank. The questions which had been submitted to the jury were few, and could be readily answered, and he (the learned Counsel) did not think they would find any difficulty as to the first three—the fourth involved the main point at issue, and to this, as he viewed the case, an easy response could likewise be given. The only note of all those discounted, under the agreement in question, that remained unpaid to the Bank, was the one issued upon, and the \$1530, part of the monies received by Mr. Gethings, from the Commissariat, on the 3rd October, could be applied to no other debt of Chartré's than in part payment of this note; for the appropriation of these monies in this particular way had been specially agreed upon between the parties; and the application of these monies as attempted by the Bank, towards the payment of the notes, which had already been retired, would, he felt sure, find little consideration at the hands of the jury. The Bank had instituted a suit, as before stated for the recovery of the amount of the cheque which had been accepted by them in payment of these four promissory notes. That suit was still pending and ought to be decided upon its own merits, and any facts relating to it could not influence the jury in the decision of this case. Even if the jury could enter into the consideration of the facts in relation to the non payment of these four promissory notes, it would then have to decide between two innocent parties—admitting, for argument sake, that the conduct of the Bank could be viewed in this light, and to say, who ought to suffer the loss by Chartré's act, he believed the decision would be in favor of the defendants. A letter written by Maxham & Co., on the 5th October last, had been read to the jury, and he should not have referred to it, had that letter not been produced for the purpose of creating an erroneous impression upon their minds. This letter bears upon its face the impress of an untruth, referring, as it does, to the four notes therein alluded to, as if the same were at that time in the possession of the plaintiffs which, as the Bank well knew, was not in accordance

with the fact. It had no bearing upon the present case, and could not therefore be made use of by the Bank for the purposes contemplated by them.

MR. JUSTICE STUART summed up the case.—The action being brought on a promissory note, which was admitted, the attention of the jury would be confined to the defence. (His Honor read the defendants' plea.) The gist of the defence they, no doubt, collected from the reading of the plea consisted in the allegation, "that at the time of the maturity of the said note by the plaintiffs declared upon in this cause, they the said plaintiffs had received and been paid under the said assignment, on account of the said note, and had then in the said Bank the sum of \$1500 to them specially paid for the purpose of retiring the same, being part and parcel of the said monies to them paid by the said Thomas William Goldie and his successor in office under the said contract with the said Pierre Chartré and the assignment thereof." The first rule for the interpretation of contracts is this: "To enable us (says Addison, page 847,) to arrive at the real intent of the parties, and to make a correct application of the words and language of the contract to the subject matter thereof, and the objects professed to be described, all the surrounding facts and circumstances may be taken into consideration. The law does not deny to the reader the same light and information that the writer enjoyed; he may acquaint himself with the reasons and circumstances that are the subjects of the allusions and statements in the written agreement, and is entitled to place himself in the same situation as the party who made the contract, to view the circumstances as he viewed them, and so to judge of the meaning of the words and of the correct application of the language to the things described." Applying this rule to the contract in question, it is fitting to look at the parties and their intention. Chartré was a contractor and required advances from one of the Banks to enable him to fulfil his contract. Of necessity he must get somebody to become a party upon the paper that he would offer to the Bank for discount; he appeared to have applied to Maxham & Co. and they wrote to the Bank on his behalf. The application was that of Chartré, and the contract which followed was one between the Bank and him. The offer by Chartré to allow the Bank to draw the monies from the Commissariat was held out, no doubt, as an inducement to the Bank to give him accommodation. The contract, then, was one between the Bank and Chartré, to discount Maxham & Co's notes in favor of Chartré, the obligation of Maxham & Co., towards the Bank being to pay these notes at maturity. The next point to be considered was how the contract was interpreted by all the parties to the present record. No rule of law or common sense is better known than that the interpretation put upon a contract by the parties themselves is the best it can receive. When the monies were received by the Bank from the Commissariat they were put to the credit of Chartré, and it could not be other-