

Appeal is to us by plaintiff, and at the argument his chief grievance was that he had been condemned in costs, seeing that he might not have opposed but for Dansereau's speech to his (plaintiff's) lawyer before the contestation; which speech is admitted substantially, and repeated in opposant's deposition, but with addition by opposant, that although Dupuis, his partner, officiously got the opposition put in, he (Dansereau) does not disapprove it, but the contrary, and that he claims the goods for the defendant's creditors and towards the costs in bankruptcy. But we do not see that the judgment complained of is illegal or erroneous. Condemnations in costs such as the one complained of, parties are not easily relieved from in Revision. The rule is not to disturb judgments upon mere question of costs. The Judge *a quo* might allow, or not allow, costs, in his discretion. We do not see that the plaintiff contesting made out a right to have costs, or to freed from costs. He had not contested upon one ground alone, as, for instance, owing to Dansereau's speech to his lawyer, before referred to, but he went into other contestation, denying Dansereau's rights *in toto*. So the judgment *a quo* is confirmed with costs.

Judgment confirmed.

Lareau & Co. for opposant.

Duhamel & Co. for plaintiff contesting.

COURT OF REVIEW.

MONTREAL, Sept. 30, 1882.

MACKAY, TORRANCE, RAINVILLE, JJ.

[From C. C., Iberville.

NOISEUX V. LA BANQUE ST. JEAN.

Evidence—Payment.

The inscription was by the plaintiff, from a judgment of the Circuit Court, District of Iberville, Chagnon, J., Oct. 21, 1881.

MACKAY, J. This case comes from Iberville. The Court there has given judgment for the defendant.

The plaintiff sued for \$144.37 as in deposit to his credit in defendant's bank. The defendants tender \$6.50 as all that is due.

It appears that in 1877 the plaintiff endorsed a note of one Brodeur to defendants for \$200. The defendants charge it against plaintiff, as Brodeur (they say) has never paid it. The plaintiff says that Brodeur paid \$100 on ac-

count of it. No receipt for it is seen, but plaintiff founds upon a pencil memorandum, almost invisible, on the note: "*Cent piastres couvert par hyp.*"

The Court at Iberville has dismissed the plaintiff's action, save to the extent of the Bank's tender.

The only question is this: Was and is plaintiff entitled to credit for \$100 more than the Bank has been condemned to pay? The plaintiff does not prove to us, any more than he did to the Court at Iberville, that the Bank ever received the \$100 from Brodeur; while the Bank has disproved that clearly. It is proved that the Bank has never really touched, from any source, \$100 for which plaintiff ought to get credit.

The pencil memorandum is explained by the Bank's witness, its cashier, who says that the pencilling was a mere memorandum never communicated to plaintiff. The plaintiff asserts the contrary; but produces nothing. The cashier says that if a certain mortgage given by Brodeur had been profitable, plaintiff might have become entitled to credit. But Brodeur went into bankruptcy and this mortgage was vacated.

Judgment confirmed.

A. D. Girard for plaintiff.

Lacoste & Co. for defendant.

Mr. Justice Patteson related the following story of my father's dexterity in the conduct of a cause; the ends of justice being attained by a theatrical display of incredulity which deceived both Brougham and Parke, the counsel on the other side. My father, with Patteson as junior counsel, was for the defendant. He told Patteson that he would manage to make Brougham produce in evidence a written instrument the withholding of which, on account of the insufficiency of the stamp, was essential for the success of his case. That on Patteson observing that, even if he could throw Brougham off his guard, he would not be so successful with Parke, my father answered that he would try. And he then conducted the case with such consummate dexterity, pretending to disbelieve the existence of the document referred to, that Brougham and Parke resolved to produce it, not being aware that my father had any suspicion of its invalidity. Patteson described the air of extreme surprise and mortification of my father on its production by Brougham, with a flourish of trumpets about the document, the non-existence of which his learned friend had reckoned on so confidently. Patteson went on to say that the way in which my father asked to look at the instrument, and his assumed astonishment at the discovery of the insufficiency of the stamp, were a masterpiece of acting.—*Life of Lord Abinger.*