form, at the instance of the respondent, and the defects resulted from the alteration.

Sir A. A. DORION, C. J., said the majority of the court were of opinion to confirm the judgment. The case turned on the appreciation of evidence. The appellant's responsibility for the roof was undoubted, and he was sufficiently put *en demeure*, by the protest served on him, to remedy the defects, and he had made some repairs himself before the new roof was put on, but these repairs were not sufficient to remedy the defects.

Judgment confirmed.

Lacoste & Globensky for Appellant.
Beique & Choquet for Respondent.

MONTREAL, December 22, 1879.

Sir A. A. DORION, C. J., MONK, RAMSAY, TESSIER & CROSS, JJ.

ARCHIBALD et al. (defts. below), Appellants, and BROWN et al. (plffs. below), Respondents.

Agency—Personal liability of Trustees of an insolvent estate, who signed notes as trustees to the estate, under a deed of composition which gave them no power to sign notes.

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., maintaining the action of the respondents. See 1 Legal News, p. 327; 22 L. C. J., p. 126.

The action was to recover the amount of five promissory notes signed by the appellants as trustees to the estate of C. D. Edwards, an insolvent. The appellants were appointed trustees under a deed of composition, by which Edwards was allowed to carry on his business under the control of trustees, until the terms of the composition should have been complied with.

The defence to the action was that appellants only signed the notes in their capacity of trustees; that Edwards having failed to fulfil his obligations, the assignee had resumed possession of the estate, and that the appellants were not personally liable.

The judgment appealed from held that the appellants were personally liable, and condemned them jointly and severally to pay the amount of the notes.

Sir A. A. DORION, C. J. (*diss.*) was of opinion that the judgment should be reversed. The notes were signed in the way usual in cases where an agent contracts so as not to render himself personally liable, viz.: by adding his representative capacity to his signature. The evidence for respondents clearly established not only that the appellants did not intend to assume a personal liability, but that the respondents did not expect them to do so, for they only requested them to sign the notes as representing the Edwards estate, knowing well their connection with that estate. The rule laid down by the Civil Code, 1715 and 1717, is that one who acts in the name of another, is not personally liable to those with whom he contracts, even when he exceeds his authority, if he has given sufficient communication of his powers. And the Code of Louisiana expressed the rule in the following terms: "The mandatary is responsible to those with whom he contracts, only when he has bound himself personally, or when he has exceeded his authority without exhibiting his powers." This doctrine was sustained by Troplong, Mandat, No. 510,776; Dalloz, Dict. vo. Mandat, No. 378; Delvincourt, vol. 3, p. 241; and Pont, Mandat, No. 1057. In the present case, the appellants added to their signatures the words: "Trustees estate C. D. Edwards," and these words were not susceptible of any other interpretation than that they did not intend to bind themselves personally. But it was said that appellants' personal liability resulted from the fact that they had no authority to bind the estate, and that they had no responsible principal. Even if this were admitted, under the articles of the Code and the authorities cited above, the respondents could have no recourse against the appellants, they (the respondents) having accepted the notes with full knowledge of the authority under which appellants were acting. His Honor, however, questioned the truth of the proposition, that a person cannot act in a representative capacity without incurring a personal liability, when he has no responsible principal. The curator to a vacant estate is not personally liable, yet there is no principal to whom the creditor can look to enforce the contract; and some other cases of the same kind were cited. The Chief Justice concluded by referring to the case of *Redpath* v. *Wigg*, L. R., 1 Ex. 335, which was almost identical with the present one. In the view which he took of the case the