

circumstance of the slip, without the money, being in the middle of the parcel; and those who are used to these things, and know all about them, say such a thing as that is very unusual and suspicious. But the theory of Sancer's responsibility might be admitted up to a certain point of time with plausibility perhaps; that is to say, as long as it is a question of veracity between him and Lesperance; but when the thing is pursued further, and it is found that this very amount was missing from Lesperance's cash, their relative positions are very much changed. The inspection showed that Lesperance, not Sancer, was the defaulter. What interest had Sancer therefore in putting a false slip into the parcel? Then it was said that Sancer, in answer to one of the telegrams from Quebec, had said that he felt sure the whole of the money had been sent, and this was argued upon as an admission on his part of the fact. Of course, when it is fairly looked at, it is only an admission of Mr. Sancer's confidence up to that time—before the inspection had taken place—nothing more.

This proceeding is not an inquisition to discover who took the money, but an action based on the distinct allegation that Lesperance took it, or, at all events, is responsible for it; and that, of course, must be proved by evidence inconsistent with any other reasonable hypothesis. Can it be pretended reasonably that Sancer, who had no deficiency, no motive, is to be put in the place of him who had both? It cannot escape observation, that what came to light previous to the inspection, that is to say, what took place at the end of May, was not the deficiency itself, if I may so speak, it was only the evidence of the deficiency. It was not then that the money was appropriated or lost, though it was only then that it was discovered. The person who left the slip with \$10,000 odd written on it, when there lacked \$6,300 of the amount, was a person who had an interest in hiding an already existing deficiency. It could not have been Sancer, therefore. It would be cruel and monstrous to entertain such a proposition. Mr. Sancer is not being tried here. If he is a defaulter let him be accused, and let him defend himself. The only question now is whether the evidence shows Lesperance to be liable, and I have come to the conclusion on this evidence that it does.

The defence of the sureties is, as I have said, different. Their three first pleas have received a sufficient answer by what has been already said on the issue with Lesperance. The deficiency is there, and the notices to the Company were given. Their fourth plea, however, regards the time at which this deficiency occurred, and the amendment is in effect that the Bank was guilty of gross negligence, and ought to have been aware of it, and have informed the Guarantee Company before contracting with them. The general answer puts all this in issue, and it does not appear that the Bank knew, nor, therefore, that it could inform the Company, of any deficiency previous to the bond. If they had voluntarily suppressed anything they knew, or were bound to know, it might vitiate their contract with the Company, no doubt; but if they were only cleverly defrauded, without the ordinary inspections and precautions usual in business disclosing the fact, they are not to be reproached on that score. They could not give notice of what they did not know themselves. Therefore this contract is not to be avoided on account of their not informing the company of things that were not within their knowledge in the ordinary course of a prudently conducted business. But admitting that the contract exists would not make the Company liable for deficiencies that occurred before the execution of the bond, whether the Bank knew of such deficiencies or not. The Company makes a much stronger case for Lesperance than he has made for himself. They produce evidence of the cuttle-fish kind. They obscure the evidence of Matte. They produce a Mr. McDonald, an accountant, against whom I have not a word to say; but in dealing with his evidence I must say what I think of it. Mr. McDonald was employed by the Company as a professional man to investigate and report upon the case for their satisfaction. I have no doubt he has done so very ably and very honestly; but the amount of it is that he reports to them that they should resist the plaintiff's claim upon the ground that all the allegations contained in Mr. Matte's deposition are susceptible of refutation; but it is evident he has misunderstood Mr. Matte's evidence, which was given in French, and a translation of it handed to the witness. He says he made his report, and that