

case to Ottawa which can possibly be carried to England. The reason for this state of things is to be found in the dissimilarity of the law in the different Provinces from which the judges have been taken, and the fact that the cases from this Province are generally supposed to be left chiefly to the two members who were appointed from the Bench and Bar of Quebec.

## NOTES OF CASES.

### SUPERIOR COURT.

Montreal, May 10, 1879.

JOHNSON, J.

FALARDEAU v. SMITH et al.

*Stamp on promissory note not duly cancelled—  
Payee may validate note by double stamping.*

JOHNSON, J. The plaintiff's action is to recover from the defendants the amount of their promissory note, payable to the plaintiff's order at his office here. Smith alone has pleaded: 1st, He pleads there is no right of action, the stamps having been cancelled by the plaintiff himself, who by law was not entitled to cancel them except by paying double duty at the time; and secondly he pleads that even if the note be considered as legally stamped, the plaintiff and all the defendants, together with a gentleman named Sanderson, were associated for the purpose of making a tender to the Government for the lease of a railway, and that a deposit of \$1,000 was required to be made with their tender, and they were to contribute \$200 apiece; but the one of them now pleading to the action, not having the ready money, gave the note now sued on to represent his share; that the thousand dollars were deposited with the Government, and were to be returned if the parties making the tender did not get the contract. That they all agreed among themselves that any of them might retire from the scheme before the acceptance of their tender. That the tender was not accepted, and the whole of the money has been returned by the Government. He further says that he formally retired from the scheme in July.

We must first look at the question as to the stamps. The plaintiff moves, after notice and on affidavit, to be permitted to affix double stamps. This subject appears at first rather

complicated from the number of statutes upon it (no less than six) that have been passed since 1864, but they have been noticed so often that I will not go into them again now. The point now before the Court was in part decided in this Court as late as November, 1877, in the case of *Delbar v. Landa* (22 Jurist, p. 46), in which it was held that the stamp need not be apposed by the maker of the note. The important thing is to have the duty paid at the time of the making of the note. Here the stamp was put on by the plaintiff to the proper amount, and at the proper time; but was not duly cancelled, which is a very different thing, and the point now is whether the plaintiff can validate the note by putting on double stamps. I think he can. Sec. 12 of the 33 Vict. c. 13, and sec. 2 of 41 Vict. c. 10 give a holder a right at any time to affix double stamps to remedy any defect that has arisen from error or inadvertence, and without any intention to violate the law. Therefore, the plaintiff's motion is granted. The effect of this will be that he must pay the costs up to the time of the filing of the plea, for, though the note is validated by the legal stamp, all costs made before its validation, and which were incurred by the defendant, must be paid by the other party.

Under the second plea, it is evident that there was an association for a certain purpose, and that the accountability of that association to any one of its members, or the liability of each member to the association, are things quite distinct from the individual liability of Smith to the individual person who lent him this money for which the note was given. It so happens that the plaintiff was made secretary of their association by all these gentlemen, and in that capacity he got the money back from the Government, that is the association got it, and remains liable to Smith for what he put into their funds, subject to deduction on account of its expenditure; but that is not to prevent the plaintiff, who in his own individual behalf lent the money on this note, of his recourse against those who contracted individually with him. The note was not the note of the association; if it had been it would have been signed on their behalf by their secretary; it was the note of each person individually, and must be paid, saving the recourse of Smith to get back from the association anything they may owe him. He resigned and is out of the concern, but remains liable up to the time of his