

# REPORT

4550

OF THE

## TRIAL OF THE CASE

OF

# THE QUEBEC BANK,

VS.

A. J. MAXHAM, et al.

IN THE SUPERIOR COURT, QUEBEC.

Before Mr. Justice Stuart and a Special Jury,  
June 9th and 11th, 1860.

THE QUEBEC BANK V. MAXHAM, et al.

SATURDAY, 9th June, 1860.

The trial of this case was commenced to-day, the Special Jury being composed of

Thomas Bickell,	William Crawford,
Duncan Macpherson,	Samuel Reid,
William Laird,	Thomas Norris,
John Gilmour,	Edward Taylor,
Robert Hamilton,	Matthew Moodie,
Charles Sharples,	Henry Tilstone.

Mr. Okill Stuart Q. C. appeared as Counsel for the plaintiffs; and Messrs. F. A. Andrews and Jones for the defendants.

This was an action against the defendants Andrew John Maxham and John Sherring Budden, co-partners trading under the name of A. J. Maxham & Co., as the makers, and against the defendant Pierre Chartré, as the endorser of a promissory note for \$2000, dated 5th of August, 1859, payable two months after date to the order of the said Chartré.

The defendant Chartré severed in his defence; the defendants Maxham and Budden pleaded:—

"That the said plaintiffs cannot maintain their action against them the said defendants as to the sum of \$1500, part of the sum by them demanded in and by the said declaration, because they say that, if at any time they did make and sign their promissory note in writing and did thereby promise to pay to Pierre Chartré, the other defendant, as mentioned in the said declaration, the sum of money in the said note specified, and if the said Pierre Chartré did endorse and deliver the said note to them the said plaintiffs, as is alleged in their said declaration, yet the said note was, while in the hands and possession of the said plaintiffs, paid and satisfied to them to the extent of the said sum of \$1500, and as to the balance of the amount thereof the same was, before the institution of the present action, to wit: on the 10th day of October last past, at the city of Quebec, offered and tendered to them the said plaintiffs by the said defendants, and for the said sum so offered the said defendants Andrew John Maxham and John Sherring Budden with these presents have filed in due form of

law their confession of judgment in favor of the said plaintiffs, with interest and costs to the present day incurred. And the said defendants Andrew John Maxham and John Sherring Budden further represent that the said note was so made and endorsed and delivered to the said plaintiffs under the representations, considerations, promises, undertakings and agreements following, and without which the said note would never have been made or endorsed by them the said defendants, or been delivered to them the said plaintiffs namely: The said Pierre Chartré, at the said city of Quebec, heretofore, to wit: on the 13th day of September 1858 became party to a certain contract or agreement, a notarial copy whereof is herewith filed, that reference may be thereto had if required, made and entered into by and between him and one Thomas William Goldie, Esquire, Assistant Commissary General to Her Majesty's Forces, acting in that capacity on behalf of Her Majesty, executed before Austin, and another, Notaries, and bearing date at Quebec the said last mentioned day, and he the said Pierre Chartré did, for the consideration therein stated, undertake and oblige himself towards the said Thomas William Goldie and his successors in office to furnish such quantity of fresh ox beef as might be required for the use of Her Majesty's troops in garrison at Quebec, for the period of one year from the first day of October then next following. And the said Pierre Chartré being unable to carry out and fulfil the said contract without obtaining certain loans of money, afterwards to wit: on the day and year last aforesaid, at Quebec aforesaid, made application to the said defendants and requested them to lend their names to certain endorsed notes whereon to obtain discounts, and thus to become his sureties for the repayment of the discounts and loans to be obtained on such endorsed notes from some one of the incorporated Banks of the said city. That the said defendants then and there, in consideration that the said Pierre Chartré would assign over to the said Bank so making such advances upon the security of their the said defendants' notes, in order that the said notes might to the extent of the monies so assigned be thus paid at maturity, by the receipt by the said Bank of the said monies, consented to become such sureties if the said loans could be thus thereafter obtained; in consequence of which said agreement entered into between the said Pierre Chartré and the said defendants, they the said defendants then and there made verbal proposals to the said plaintiffs in this cause, then being one of the incorporated Banks of the said city of Quebec, with a view to carry out the said