

Montreal. This account was opened with him at respondent's bank, to whose officers he was an entire stranger, without any enquiries as to his character, without any introduction, and without the knowledge of the manager, by one of the bank clerks. On the 21st September Deton, by his office boy, deposited this draft, "raised" or altered to \$5,000, in the Ontario Bank, and it was placed to his credit on that day, as of that amount. Respondents stamped it with the stamp of their Bank, showing it to be the Bank's property, and next day, 22nd September, 1877, presented it to appellants for payment, and this sum was at once paid without question to respondents by the appellant's manager. Deton drew out, by cheque, \$3,500 from the Ontario Bank on the 22nd September, the same day that the appellants paid the draft in question, after which he absconded and has not since been heard of. Appellants brought their action against respondents in the Court below to recover the sum of \$4,975, being the amount by which the \$5,000 paid by them exceeds the draft of \$25 really issued to Deton; and in their declaration they allege that the defendants, representing the draft to be genuine, presented the fraudulently altered draft to appellants for payment, and obtained payment without giving any consideration or value therefor.

In the consideration of this case it is evident at the outset that the appellants are in the position of parties who have paid by error what they did not owe; and contend that they have a clear right to recover it back, unless the respondents can show that this case is an exception to the general rule, that what is paid without cause can be recovered back. C. C. art. 1047. To this demand respondents pleaded: That they were ignorant whether the draft in question was originally issued to said Deton for \$25 only; but that when the draft was placed in their hands for collection, it purported and appeared to be, and had in all respects, the genuine and *bona fide* appearance of a draft for \$5,000; and, as in appellants' declaration set forth, the alteration, if ever made, had been so skilfully done as to render it impossible to be detected. That Deton was not a regular customer of the respondents, having only opened a deposit account with them a short time previous to depositing with them the draft

in question. That on the 22nd September, 1877, Deton had brought the respondents the draft in question, and requested them to receive it on deposit, which they agreed to do; but notified him that they would not allow him to draw, nor would they accept his cheques, against the amount thereof, until the same had been accepted and paid by the appellants. That thereupon respondents in good faith, and in the course of their transactions with the appellants presented the draft for payment, and the appellants accepted and paid the same without demur, and thereby confirmed the respondents in the belief that the draft was genuine; and after receiving the amount, the respondents paid over to Deton \$3,485 thereof, leaving a balance of \$1,515 which Deton had not received, and which they had tendered back to the appellants on being informed of the change which had been made in the draft, but without waiver of their rights in the premises; which tender they repeated in their plea. That appellants were by law bound to recognize their own drafts and to know the amount thereof, as they might easily have done by the exercise of ordinary care and diligence; and that as they had accepted and paid the draft to the respondents, the latter were justified in paying over the amount thereof to the person from whom they had received the draft; and that the appellants cannot recover from the respondents any portion of the amount so paid over. By their conclusions the respondents prayed *acte* of the tender of the \$1,515, and the dismissal of the action. They also filed a general denial of the allegations of the appellant's demand.

Upon these issues thus formed, the Union Bank proceeded to the adduction of proof, and in regard to the evidence there exists very little doubt, in fact no controversy. It was established, and the judgment recognizes, that the draft was issued by appellants for \$25, and was altered to \$5,000. It is also established, beyond question, that respondents presented this draft, which bore the endorsement of Charles Deton, and the stamp of the Ontario Bank, to the appellants' office in Montreal, and were paid the amount. There was nothing to indicate to appellants that respondents were not complete owners of this draft, of which they were holders. The question to be decided is