"It cannot be said that the executors ratified Mélançon's acts. They had no power to ratify. Want of power to do a thing necessarily means want of power to ratify it."

Trenholme, J. also dissented. — "The executors could not do certain things and they could not as a consequence delegate those powers to one of their number. They might have bound their own respective shares in the estate, but they could not bind shares belonging to others."

The judgment of the majority of the Court was delivered by

Carroll, J.:—"Appellants are two of the three executors of the estate of the late Claude Mélançon, and they claim from the respondent the sum of $22,509.22, paid to it by error and without consideration, and they also demand that their note, now in the possession of the respondent, be reduced from $28,000 to $18,000. Appellants allege that they appointed their fellow-executor to act in the name of them all, and that, in utter disregard both of Claude Mélançon's will and of the power of attorney from appellants, their co-executor—Joseph Melancon— used the moneys of the estate for his personal affairs, the whole to the knowledge and with the consent of the respondent.

"The bank pleaded that any notes, in its possession of Joseph Mélançon had been paid either by him or the appellants; that Joseph Mélançon had authority to bind the estate and in its dealings with him the respondent had acted in good faith.

"The following are the pertinent particulars and clauses of Claude Mélançon's will: The will was made on the 31st March, 1888—that is, about seven months before the testator died. He left his estate to his widow and nine children, but empowered his executors—the widow and