

The case must be looked at first of all with respect to Lesperance. If he is a defaulter, there is an end of the matter as far as he is concerned; but the case of his surety must be looked at on its own merits, and raises different questions. The evidence is very bulky and hard to master. It is all taken under the old system of the *Enquête au long*, so long used, or rather abused, in this Province, and fitter at all times to baffle than to assist justice. It will suffice for me to state the conclusions which I draw from it, and which enable me to base my judgment in the case, both as to the liability of the officer of the Bank, and as to that of his surety. First then, as to Lesperance himself. The whole thing is a question of evidence, and all the facts and circumstances must be considered. His own evidence, whatever may be its effect for or against the other defendant, can, of course, have no effect at all to exonerate him from direct liability to his employer.

The facts are correctly stated in the declaration as to the time of Lesperance's leaving the bank on the afternoon of the 23rd, his absence the next day, which was the Queen's birth-day, and also the next day, of course, which was a Sunday. On the Monday morning he sent his keys, by his brother, to the manager, who found himself somewhat embarrassed, as there was another clerk absent on leave at the time, and who usually took Lesperance's place when the latter did not come to the office. But he did the best he could. He found Lesperance had left separate parcels tied up with string, and having slips of paper on them mentioning, in Lesperance's hand-writing, the amount in each parcel, one being endorsed \$10,363, B. N., Quebec; and there were also loose bills. As the Manager had to go behind the counter himself, and do the work of the day, he had not time to undo the parcels and count the contents; so he trusted to what was written on the slips. As to the loose bills and checks, however, he counted them. Later in the day, the Manager, having to send a round sum to Quebec, took \$4,637, tied them up and added them to the parcel left by Lesperance containing apparently \$10,363, intending to send off \$15,000; and the messenger enclosed the whole in a paper cover, sealed it up, and delivered it to the Express; and in that state the parcel and contents were, the next day, delivered at the office of the

bank in Quebec, where the teller (Boucher) received it, opened it and saw the contents, but did not immediately count the money, and put the whole into his safe until the next day, when he untied the parcels or bunches of bills; found the \$4,637 (which had been put in by Sancer) all right, but the one which had been done up by Lesperance lacked \$6,300. This is the first appearance, or first discovery, of any deficit at all. The next thing that happened was that this was notified to the office at Montreal, and the Inspector, Mr. Matte, was sent up to make enquiry and examination. There can be no doubt whatever of the result of Mr. Matte's investigation, which was, according to his sworn evidence, to establish Lesperance's defalcation precisely to this amount, viz., \$6,300, and extending over a considerable time back. This is the result to which the evidence has conducted my mind. There is much in it which it was difficult to apprehend clearly at first; but I have referred to it over and over again, and I cannot say there is any cause for reasonable doubt. There were witnesses examined on Lesperance's behalf—witnesses of great respectability no doubt—residents of Longueuil, who testified to his general good character and habits, and to their own disbelief (whatever that may be worth), of his having used the money. These gentlemen spoke of the bringing of the criminal charge, and of its having been abandoned. Whether it has been abandoned or not, does not clearly appear; nor, indeed, is it at all important to know whether a criminal charge for having stolen the money is maintainable against him or not. If this money, which had been in his custody, is missing after a careful inspection, he ought to give some account of it. It is impossible to shut one's eyes to the reasonable and proper effect of the inspector's evidence, or to the circumstances attending it. I forbear from emphasising every point; but it must be remembered that he had the defendant, Lesperance, with him in the vault, as a *légitime contradicteur* as it were, and he was constantly referred to for explanations, which were not forthcoming. It is broadly contended that Mr. Sancer himself may have taken the money from the parcel left by Lesperance; but where is the evidence that the \$6,300 were ever in that parcel? There is positively none whatever. Then, there is the