QUEBEC.

NOTES OF CASES.

(From the *Legal News.*)

UNION BANK v. ONTARIO BANK.

Banking—Forged Draft.

One Deton, on the 17th September, opened a deposit account with the Ontario Bank at Montreal. On the 19th September he obtained from the Union Bank at Quebec a draft for $25 upon the agency of the Union Bank at Montreal. On the 21st September he deposited this draft, fraudulently raised in amount to $5,000, in the Ontario Bank at Montreal. The latter Bank took the precaution of stipulating that the depositor was not to draw cheques against the amount until the draft had been accepted by the Union Bank. The draft went to the Union Bank branch at Montreal in ordinary course, and this branch, having had no advice from its Quebec office, supposed it was all right and paid the money. Deton subsequently obtained from the Ontario Bank $3,500 on a cheque against his deposit, and fled the country before the fraud was discovered, which was not until six days after the draft was issued at Quebec.

The question was which Bank should suffer the loss of the $3,508 fraudulently obtained by Deton. The Union Bank claimed to be repaid the whole excess over the original $25. The Ontario Bank repudiated all liability, but offered to return the $1,500 which remained at the credit of Deton in the Bank.

Mr. Justice JETTE held that the Ontario Bank had taken all the care to guard against fraud that could be expected of it, and that the Union Bank, in neglecting to advise its Montreal branch of the draft, was in fault.

Held, on appeal (Monk J. *dissenting*) that the judgment was right.

RAMSAY, J. said, This case has to be decided by the law of England as it stood on the 30th May, 1849, Art. 2340 C. C. The date is unimportant in the present case. It seems to be unquestionable that according to that law the acceptor of a bill, the signature of which is genuine, but altered as to the amount since it passed from the hands of the drawer, and who had paid the same, could recover back the amount he had overpaid owing to the forgery. The cases of *Smith* v. *Chester*, 1 Durn. & E. 654, and *Jones* v. *Ryde*, 5 Taunt. 487, support this contention In the latter of these cases, Chief Justice Gibbs points out the distinction between the case before him and the case of *Price* v. *Neale*, 3 Bur. 1354, and the case of *Baillie* v. *Gingell*, 3 Esp. 60. It is quite evident, on general principles, that this must be true. The acceptor or payee got no value for his money, and consequently he had a right to recover back what he had paid, precisely on the same principle that any one who had received a counterfeit shilling from another by mistake could recover back his money. But it is contended that the acceptance differs from payment in this, that the acceptance is a deliberate recognition and a warranty of the whole bill. If this proposition be true, then there is an end to the discussion, but the authorities cited by appellant contradict this pretension. Daniel distinctly says the acceptor guarantees the signature and not the body of the bill. The one he has means of knowing about, the other he has not. The same doctrine is laid down in the case of the *National Bank of Commerce* (in New York) v. *The National Mechanics' Banking Association* 55 N.Y. Rep. 211, cited by respondent. Indeed, it is difficult to understand how any other doctrine could prevail. Starting from this point, appellants contend that they were not bound to know that the draft had been altered, that their acceptance covered only the signature, which was genuine. They say, moreover, that they were led into error by the fact that the draft had been passed by the Ontario Bank, —that if the unknown Deton had presented the draft himself they would have made enquiry, which would have resulted in discovery. In a word, they say that the Ontario Bank had passed upon them a forgery, and that, therefore, the respondents were obliged to return them the money and exercise their recourse against Deton. This position is doubtless very strong, and if it had been supported by authority I should not have felt disposed to alter the rule. Nevertheless, I do not think the argument perfectly sound. As we have already seen, the acceptor is held by his acceptance so far as to recognize that the signature, which he is presumed to know, is genuine. It seems to me that when a Bank is dealing with its own paper it should be presumed to know not only the signature but the whole document. It was the appellants who set the whole thing in movement, and by the signature of their cashier gave currency to a draft which they themselves did not know was forged. They were so secure that they ordered their branch to pay "with or without advice." It seems to me that any other doctrine would lead to inconvenience, and that if this does not hold good for drafts, it would be difficult to say why the rule should obtain with regard to bank notes.

DARLING v. MCINTYRE.

Insolvent Act of 1875—Action under sec. 133—Repealing Act.

An action under s. 133 of the Insolvent Act of 1875 may still be brought, in any case in which the estate of the insolvent became vested in an official assignee before the passing of the act repealing the Insolvent Act.