

vente que sur le transport des livres vendus, et laquelle balance de créance, le dit demandeur, présentement, le droit d'exiger et recouvrer en entier du dit défendeur, à défaut par ce dernier d'avoir payé deux versements consécutifs sur icelle dite balance de créance, le tout aux termes et suivant les conditions de la dite vente : avec intérêt sur la susdite somme de \$130.68, à compter du 13 Novembre 1877, jour d'assignation, jusqu'à paiement, et les dépens distraits," etc.

Sir A. A. DORION, C.J., was of opinion that the action was wrongly brought. It ought to have been in the name of Pilon, the contract showing that it was with him that the appellant had contracted.

RAMSAY, J. This case is not similar to that of *Crane & Nolan* (19 L.C.J., p. 309). In that case I thought the action rightly brought, as the plaintiff was the factor of a foreign principal. In this case the action is brought on a contract between the appellant and the principal, and the question of factorship does not arise. I would reverse.

The judgment was as follows :—

"La Cour, etc...."

"Considérant que l'intimé n'a vendu les effets mentionnés en la déclaration en cette cause que comme l'agent de la maison Abel Pilon & Cie. de Paris, ainsi qu'il l'allègue dans sa déclaration ; que le compte produit, ou bulletin de souscription produit par l'intimé est fait au nom d'Abel Pilon, et ne constate une obligation de la part de l'appellant qu'envers le dit Abel Pilon, et non envers l'intimé ;

"Considérant que sous ces circonstances l'Art. 1738 du Code Civil est inapplicable à cette cause, et que l'intimé n'avait aucune action contre l'appellant ;

"Et considérant qu'il y a erreur dans le jugement rendu par la Cour Supérieure siégeant à Montréal, le 17 Mai 1878, et dans le jugement rendu par la Cour Supérieure siégeant en révision à Montréal le 21 Juin 1878 ;

"Cette Cour casse et annule le dit jugement du 21 Juin 1878, et renvoie l'action de l'intimé avec dépens tant en Cour Inférieure que sur le présent appel, et condamne l'appellant aux frais encourus sur l'inscription en révision."

Judgment reversed.

Doutre & Doutre, for Appellant.

Ethier & Pelletier, for Respondent.

LEGGE (plff. below), Appellant, and LAURENTIAN RAILWAY Co. (defts. below), Respondents.

Parol Evidence—Agreement by engineer to take salary in bonds of a railway.

This was an action instituted by Mr. Charles Legge, and continued by his brother as curator, for the recovery of \$855, for engineering services performed by Mr. Legge in connection with the respondents' railway.

The plea admitted the indebtedness in great part, but said that the appellant had agreed to take payment in bonds or debentures of the Company, and bonds were tendered.

The plaintiff denied the agreement, and alleged further, that the bonds produced by the Company were utterly worthless.

At enquête, it was proved by the verbal evidence of Peter S. Murphy, managing director of the Company, that Mr. Legge had agreed to take his salary as chief engineer in debentures of the Company at 50 cents in the dollar, the same as all the other officers of the Company. The Company, in fact, had no money, and nothing but bonds to pay anybody with.

At the time this evidence was offered Charles Legge had been interdicted for mental alienation, and could not be examined.

The Court below maintained the plea.

Sir A. A. DORION, C.J., said the Court was of opinion to confirm the judgment on the main point, the admission of verbal evidence to prove the fact set up by the plea. It was an agreement of a commercial character, and the way in which payment was to be made might be proved by parol testimony. There was an error, however, in the tender. The respondents should have tendered \$1,239 in bonds for the \$619.50, balance due. Their offer of \$1,500 in bonds, on condition that the appellant should pay them the difference between \$1,239 and \$1,500, could not be sustained. The judgment must, therefore, be reformed, and respondents condemned to pay appellant \$619.50, unless bonds to the amount of \$1,239 were handed to him.

The judgment is as follows :—

"La Cour, etc.,

"Considérant que la Compagnie intimée a reconnu devoir la somme de \$619.50 à Charles Legge représentée en cette cause par l'appellant, pour les causes mentionnées en la déclaration en cette cause ;