

and even then, the action would be by the consignor against the consignee to account and pay for the goods. This point is not applicable here. In the next place, the mere order for the payment of money, or draft, only becomes contractual upon its acceptance by the drawee here, and its payment here by the latter is necessarily the cause of action, not the mere order in itself from Upper Canada. The draft is mere blank paper till accepted. Then it becomes a contract. It is the payment of the money in Montreal by the drawee for the profit and advantage here of the drawer, which makes up the cause. So that the cause of action being the acceptance here by the drawee, and the payment here by him, in excess of drawer's funds in hand, the plaintiff was right in bringing the action here, and, therefore, the declinatory exception was properly dismissed. My opinion is to confirm the judgment.

MONDELET, J., concurred.

R. & G. Laframme, for the Appellant.

Rose & Ritchie, for the Respondent.

Dec. 5, 6, 1866.

BEAUDRY (plaintiff in the Court below) Appellant; and CORPORATION OF MONTREAL (defendant in the Court below) Respondents.

*Practice—Appeal—Interlocutory Judgment—Inscription en faux.*

*Held*, that a judgment dismissing an inscription *en faux* on a *défense en droit*, is an interlocutory judgment in the cause, and the appeal therefrom should be prosecuted as from an interlocutory judgment.

Motion *ni si causa* on the part of the plaintiff to be permitted to appeal from an interlocutory judgment rendered 30th Nov., 1866, by the Superior Court on a *défense en droit* dismissing the inscription *en faux* filed by the plaintiff, against a certain certificate, dated 9th Feb., 1865, signed by the prothonotary. This certificate stated that the defendants had deposited in the hands of the prothonotary the sum of \$2730, for compensation for land, the property of the plaintiff, which the defendants pretended they had acquired by expropriation.

An objection was raised that there was no necessity for obtaining a rule to show cause why a writ of appeal should not be granted,

inasmuch as the judgment in question was a definitive judgment. C. S. L. C., cap. 77, sec. 20.

The following was the judgment.

MONDELET, J. I do not exactly dissent. The inscription *en faux* is an incident in the suit, but in this case the *pièce* inscribed against being the foundation of the action, of course when the judgment dismissed the inscription *en faux*, it seems to me it was a final judgment, with respect to the inscription *en faux*. I am told, it makes no difference, since permission to appeal is prayed for. But what I am afraid of is that the line of demarcation between final judgments and interlocutory judgments will be altogether removed.

BADGLEY, J. I think it is a mere *question de mots*. 'So far as the inscription *en faux* is concerned, it in fact may be the real issue in the case; but the judgment upon the *faux*, though a final judgment upon the *faux*, is not a final judgment in the cause within the technical meaning of the Statute. Therefore, though we call it a final judgment *en faux*, it is nothing more nor less than an interlocutory judgment in the cause. This being so, how are you to proceed? Is there an appeal from it? The Court in *Perrault and Simard*, held that it was appealable, and I have no wish to disturb that judgment, particularly as it is in accordance with my own opinion. The judgment, then, not being a final judgment, you can only come at it as an interlocutory judgment.

AYLWIN, J. We are only giving the same decision that was given fourteen years ago by Justices Stuart and Panet.

DRUMMOND, J. I do not see how a final judgment upon an incident can be considered a final judgment in the cause.

Motion granted, and appeal allowed.

C. A. Leblanc, for the Appellant.

H. Stuart, Q. C., for the Respondents.

[IN ERROR.]

March 6, 7, 8, 9.

RAMSAY, Plaintiff in Error, v. THE QUEEN, Defendant in Error.

*Contempt of Court—Recusation of Judge—Writ of Error—Appeal.*

*Held*, 1st. That a judge, who has rendered judgment in a case of contempt of Court, is