

Maitland and Molson, (Stuart's Reports, p. 441,) and to the case of the *Cumberland*, (Stuart's Adm. Rep., p. 75); but I do not find that the judgments in those cases can aid us in the present instance, in which the questions to be adjudicated upon are purely questions of fact; and after giving to those questions the best consideration in my power, I think it certain that the respondent is very blameable for the situation in which his barge was at the time of the collision; and I think the preponderance of evidence is decidedly in favour of the pretension of the appellant, that it was not in the power of those in charge of the steamer to stop her in time to avoid the collision, and that they could not, consistently with prudence, have attempted to pass to the rear of the steamer, by deviating from the channel to the left. For these reasons I think the judgment must be reversed.

MONDELET, J., dissented from the judgment. Aylwin and Drummond, JJ., concurred.

*Judgment reversed*, Mondelet, J., dissenting.

*Cross & Lunn*, for Appellants; *Loranger & Loranger*, for Respondent.

CORPORATION OF THE PARISH OF ST. BARTHELEMY, (defendants in the Court below,) Appellants; and DESORCY, (plaintiff below), Respondent.

Question as to the nullity of a certain by-law of the Municipal Council.

This was an appeal from a judgment of the Superior Court for the district of Richelieu, rendered by Mr. Justice Badgley. The action was brought to rescind the sale of certain property belonging to the plaintiff, which had been sold by the Secretary-Treasurer of the Municipal Council of the County of Berthier, in payment of taxes due to the defendants. The plea was, that the sale had taken place in accordance with by-laws made in due form by the defendants. The plaintiff answered, that the by-law of 5th September, 1859, on which the defendants chiefly relied, was illegal on its face. By the judgment of the Court below, the plaintiff's action was maintained on the ground that the by-law of 5th September, 1859, ordering the opening of a certain road, and levying a special tax, was not accompanied by the formalities required by law. In particular, it was alleged that

there was no *procès-verbal* previously made, and that those interested in the road were not notified of the proceedings of the Council, as the law required. The defendants appealed from this judgment. The chief points to be determined on the appeal were, 1st, whether the by-law was null on its face; 2d, whether the plaintiff could invoke this nullity in his special answer.

DRUMMOND, J., pronounced the judgment of the Court of Appeals, which confirmed that of the Court below.

Judgment confirmed unanimously.

*E. U. Piché*, for Appellants; *Olivier & Armstrong*, for Respondent.

FOLEY *et al.* (defendants in the Court below), Appellants; and FORESTER *et al.* (plaintiffs in the Court below), Respondents.

Proof in an action *ex parte* on a promissory note.

The action in the Court below was brought against the defendants as makers and endorser of a promissory note.

No proof was adduced on behalf of the plaintiffs; the defendants were foreclosed from pleading, and judgment was rendered *ex parte* in the plaintiffs' favour. The question submitted on the appeal was whether in such a case the plaintiffs should not have made proof of the partnership alleged to exist between them, and also of the partnership alleged to have existed between the defendants. Every signature and writing to or upon a promissory note, is, in a default or *ex parte* case, presumed to be genuine; but it was submitted that extraneous facts, such as the quality of the paper, were not to be taken as proved or admitted in default or *ex parte* cases.

DUVAL, C. J., said there was no ground whatever for this appeal.

Aylwin, Drummond and Mondelet, JJ., concurred.

Judgment confirmed unanimously.

*A. & W. Robertson*, for Appellants; *Cross & Lunn*, for Respondents.

JONES *et al.* (defendants in the Court below,) Appellants; and GUYON *dit* LEMOINE, (plaintiff in the Court below,) Respondent.

*Held*, that the Court may discharge a *délibéré*, and order the case to be inscribed on the