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MUNN & BERGER ET AL.

After an unexplained reticence of nearly two years and a half, we have a report of the decision of the Supreme Court in this case (10 S. C. R. 524). Those present at the judgment circulated contradictory accounts as to what the decision implied. One rumor conveyed the idea that the judgment only affirmed that the evidence had been stopped prematurely, while another was that a contract might be maintained on verbal evidence of a verbal acceptance. All reasonable doubt on the subject is now cleared away. The head-note of the reporter lacks precision, but it was unequivocally held—that an action upon any contract for the sale of goods, where there is no writing signed by the party (*i.e.* the party to be bound), *may* be maintained, without *commencement de preuve par écrit*, by verbal evidence of an acceptance *by words only*.

Four of the five judges, who have thus reversed the decisions of two Courts, and of six judges of the province of Quebec, in delivering judgment spoke; and although there are little inexactitudes of expression which might justify acerb criticism, it is impossible to read their opinions, and with candour state their holding otherwise than we have done. The concluding words of Chief Justice Ritchie, "we cannot anticipate what the answers would have been, or whether they would have sustained plaintiff's contention," and the concluding observation of Mr. Justice Gwynne, explain the contradictory accounts we heard of the ruling, but it would be idle to contend that these reservations affect the issue decided by the Court. To all intents and purposes it is laid down as law that acceptance in its narrowest signification, that is, as being part of the contract, can be proved without writing, although the whole contract cannot be so proved. The disposition of the 4th sub-section of article 1235, C. C., is therefore declared to be inoperative.

It is not unlikely that the hierarchical authority of the five will ultimately give way to the authority of reason of the greater number.

In the meantime let the Messrs. Berger console themselves with the reflection that they are (perhaps in a small way—we are not all born to greatness), martyrs to science. Their case has served to elucidate a difficulty exaggerated if not entirely created by the code, and to illustrate the legal acumen of the Supreme Court.

R.

SUPERIOR COURT.

St. John's, Dist. of Iberville,
November 2, 1885.

Before Chagnon, J.

Gadoua et al. v. Rev. A. P. Tassé.

Jurisdiction—District—Order issued by Judge in another district—Pleading—Costs.

Held:—1. *That an order in a case pending in one district of the Province, can only be legally made by the Judge resident in that district, or by a Judge acting as substitute for the resident Judge and exercising his functions in the said district. An order made outside the district by a Judge exercising his functions in a district other than that in which the cause is pending is irregular and illegal.*

2. *That such illegality may be invoked by exception to the form.*

3. *Where before the exception to the form has been disposed of, the parties by consent have proceeded to the merits, the Court, in dismissing the action upon the exception, will order each party to bear his own costs of the contestation on the merits.*

Per Curiam. Il s'agit d'un bref de Mandamus à l'effet de forcer Messire Tassé, curé de la paroisse de St. Cyprien de Napierville, de convoquer une assemblée des marguilliers anciens et nouveaux, et des paroissiens et franc-tenanciers de la dite paroisse, pour prendre en considération la question de l'opportunité de se servir pour l'agrandissement du vieux cimetière d'une partie de terrain y attenante, aujourd'hui occupée par le défendeur, et aussi pour prendre en considération généralement l'usage qui devrait être fait de cette partie de terrain, afin d'empêcher qu'il ne retournât à celui qui en avait fait la con-