difference to the interests of his employers. The inveterate practice of the bank (say two witnesses) was always to see that all notes discounted were duly stamped, and a book exists showing what notes have ever been presented to the defendant's bank unstamped, for discount, and what stamped, and from what appears the note, the foundation of this action, *was* stamped when presented—so say two witnesses.

Under the 33 Vic., the plaintiff incurred a penalty of $100 for endorsing, or for paying the note he now sues upon, if unstamped. *He* had duty, as others had, to see to the stamping of the note. The defendants' bank certainly had such duty, and a penalty was enacted first by the 31 Vic., and afterwards by the 33 Vic., against them if they discounted notes unstamped. The penalty was a fine of $100 and utter nullity of a note unstamped as required by the statute. But for this enactment of nullity of the note it would be held by some that the nullity did not exist. But we need not go into that particular question. The Promissory Note Act reads:—"After a note requiring to be stamped has been settled, or paid, no penalty shall be enforced against any party thereto, or against any person or corporation, who had been the holder thereof, by reason of such note having been insufficiently stamped, &c., unless it be proved that the party from whom a penalty is demanded was aware, before or at the date of the maturity of such note, of the defect in the stamping, or in the effacing of the stamps thereon, and did not thereupon affix double stamps thereto," &c.

Even in the absence of such particular law, I would pronounce in favor of defendants upon what proofs are of record. But in the presence of it I ask: Has the plaintiff proved that the defendants' bank was aware before or at the date of the maturity of the note referred to in the pleadings in this cause, of the want of stamps, etc.? I do not see it, and I believe that the clause last read by me is to be treated in favor of the defendants, and of persons in their position, and charged as they are in this cause. It was statute law of repose, and meant as such. But for it I have no doubt that hundreds of suits could be invented against banks and others; for very slovenly modes of defacing stamps have been pursued, and the penalties have been ordered as much against insufficient defacing of stamps as against the total want of them.

Under all the circumstances, I am of opinion that plaintiff's action ought not to be maintained; so it is dismissed with costs.

Peltier & Jodoin, for plaintiff.
R. Laflamme, Q. C., counsel.
Beique & McGoun, for defendants.

SUPERIOR COURT.

MONTREAL, Oct. 12, 1881.

Before TORRANCE, J.

PRATT v. BERGER.

Partnership—Proof of, where not witnessed by a writing.

PER CURIAM. This was a demand for $8,000, for goods sold and delivered, and materials supplied. The declaration was in the usual assumpsit form.

The plea was to the effect that the contract set out by plaintiff had not existed, but on the contrary, the defendant had employed the plaintiff as a journeyman on wages, and had paid him for his work.

The evidence showed that in 1879, there were tenders asked for the supply of furniture to the Jacques-Cartier School. Both George Pratt, the plaintiff, and Noel Pratt, his father, acting for him, and Berger were desirous of securing the contract as a profitable one. Pratt was an insolvent, but he was a skilled workman, and Berger could supply funds.

Rosaire Thibaudeau deposed that the government were induced to accept the tender of Berger on the representation that Pratt had an interest in it. The work was chiefly done at the workshop of Pratt who now worked in the name of his son, the plaintiff, from whom a full power of attorney was produced. The foreman of Berger took an active part in the superintendance of the work, and both Pratt and Berger superintended likewise. The money and credit of Berger were largely used, and the evidence of several witnesses proved that both plaintiff and defendant represented that they were jointly interested in the fulfilment of the contract and that there was a partnership. The statute of frauds prevents the proof of an agreement for a partnership, but certain facts may be proved from which a partnership necessarily exists. De Villeneuve in his Dictionnaire du