

*Guise*, 2 Ld. Raym. 1008; *Regina v. Corporation of Cornwall*, 11 Mod. 174; *Rex v. Harwood*, 2 Ld. Raym 1405; *Rex v. Williams*, 3 M. & R. 402; *Tapping on Mandamus*, p. 73. Consequently, it can now be determined by pleading to the return and a trial of the issues so raised.

In *Anon.*, 2 Barn. 326, on motion for mandamus for delivery of books, it being objected that, there being a contest as to the right to the office, it should not be granted, the objection was overruled as, it was said, the facts concerning the contest would properly come up on the return.

In *Rex v. Hofford*, 2 Barn. 350, a precedent was cited by the Court, in which, where a mandamus was directed to one Kelley to deliver to one Wm. Thorney the records of the town, belonging to the steward of the court, and a return was made to it that Thorney had no right to them, this return was tried, and a peremptory mandamus was afterwards granted.

Even if the affidavits in reply can be here considered, there are really contradictions as to the facts concerning the meetings which cannot be tried upon affidavit. Though it is unfortunate that the records of the municipality should be so withheld from the council for the time that will be required fully to determine the matters in question, I can at present grant the rule only for an alternative writ of mandamus.

---

### QUEBEC BANK v. MILLER.

(IN APPEAL.)

#### *Bill of Exchange.—Acceptance not in firm name.*

A bill was drawn upon M. & McQ. for goods supplied to M., McQ. & Co. There was in fact no such firm as M. & McQ., and the bill being taken to M. McQ. & Co., their manager, who had power to accept in the name of the firm, accepted in the name of M. & McQ.

*Held.* That the firm was not liable.

The acceptance of a bill, payable at the office of the drawer, carries with it notice that the acceptance is accommodation.

*J. B. McArthur, Q.C.*, for the plaintiffs.

*J. S. Ewart, Q.C.*, for the defendants.