

at the time of accepting the draft he had not in his hands any goods or moneys of the defendant.

To this action the defendant pleaded a declinatory exception, alleging that he was wrongly impleaded, inasmuch as he had his domicile in Upper Canada, as appeared by the writ of summons and process in the cause; that moreover it appeared that the cause of debt originated in Upper Canada, and that the action under such circumstances was cognizable only by the tribunals of Upper Canada.

The case was submitted on the following admissions: "The parties admit, but only for the purposes of the issue joined on the exception *déclinatoire*, that the flour referred to in the plaintiff's declaration, was consigned from Paris in Upper Canada, by the defendant to the plaintiff for sale to be made, and that the same was by the plaintiff sold in Montreal; that the draft referred to in the declaration was drawn after said consignment against the said consignment of flour, and that the money sought to be recovered by plaintiff was by him paid upon the said draft at Montreal, and that at all the times mentioned in the plaintiff's declaration, the defendant resided in Upper Canada. That the said consignment, draft or bill of exchange and payment as above mentioned, set forth in the two counts of plaintiff's declaration before the third count thereof, constituted for the purpose of the said exception the sole cause of indebtedness which the plaintiff pretends to claim from the defendant by the present action. That the paper writing herewith filed by the plaintiff, is a true copy of the sold note of the said flour." The declinatory exception being dismissed, the defendant appealed.

*Laflamme, Q.C.*, for the appellant. The whole question was a question of law. That the draft constituted the only cause of indebtedness of the appellant to the respondent was admitted. If so, the only question was and is, to determine: Where is the contract made between the drawer and drawee on a draft? If it be at the place where it is dated and signed, as the appellant asserts, then the judgment of the Court below is unquestionably wrong.

*Ritchie*, for the respondent. The only ques-

tion in this appeal is, what was the cause of action? The respondent submits that the causes—and the only causes—of action were the receipt by him of the flour, its sale and the overpayment made by him, all at Montreal. The draft is not one of the causes of action—it is merely a piece of evidence of the amount paid. The plaintiff's action is complete without it. The fact that the appellant, for his own convenience, gave an order for payment dated in Upper Canada, is one of no importance as affecting the question of jurisdiction. The liability of the appellant to make good an amount paid for him at Montreal, without consideration, arises out of the relations existing between him and the respondent, as his agent. It was within the jurisdiction of the Superior Court at Montreal that the liability of the respondent as a factor commenced—that his duties as such were performed, and that he paid the sum sought to be recovered by his action in the Court below. The position of the respondent cannot be made worse than it otherwise would have been, merely because an order affording him ready means of proving the payment made by him in Montreal happens to be dated in Upper Canada.

*AYLWIN, J.* This was an action brought in Montreal against the appellant as a person resident at Paris, U. C. The plea is by exception *déclinatoire* to this effect: That the defendant was wrongly impleaded, inasmuch as he had his domicile in Upper Canada, and the cause of debt originated there. But it appears that there has been an admission in these words: (His Honour read the admission stated above.) Now, in consequence of this admission, the question does not arise at all, and therefore the judgment was perfectly right, and must be confirmed.

*DRUMMOND, J.* I must say that my first impression was that the cause of action arose in Upper Canada, because the draft was signed there; but on looking the case over, and seeing the admissions, it appears clearly to me, that the draft was only incidental, and that the transactions in Montreal really constituted the cause of action.

*BADGLEY, J.* In the first place, the consignment in itself only becomes a cause of action when it is received by the consignee,