

the sum of \$4520, and by the same writing acknowledged receipt of the wood, declared himself satisfied therewith, and discharged the vendor, "*de toute garantie ultérieure*." The purchaser having measured the wood, found it 423 cords short, and a portion of it rotten. Suit for value of wood not delivered and of the part that was rotten. *Held*, that by the terms of the agreement the sale was *en bloc* and not by the cord, and the purchaser could not recover.

— Judgment confirmed.

M. E. Charpentier for appellant.

Duhamel & Rainville for respondent.

THE EASTERN TOWNSHIPS' BANK (plffs. below),
Appellants; and MORRILL (one of the defts.
below), Respondent.

*Amendment of writ—Erroneous description of firm—
Exception to the form.*

A firm, originally composed of two partners, admitted a third. The change was not registered, and the firm was sued as if composed of the first two partners only. Service was made at the place of business of the new firm. *Held*, that the plaintiffs were entitled to amend the writ by inserting the name of the new partner, and an exception to the form, attacking the amendment, pleaded by the new partner when thus brought into the case, was dismissed.

The appellants sued a firm of H. S. Beebe & Co. on promissory notes. The firm was described as composed of Anson Beebe and H. S. Beebe; but it appeared that a third partner, the respondent Morrill, had been admitted into the firm, though the change had not been registered. The service had been made at the place of business of the new firm. The plaintiffs obtained leave to amend the description of the defendants' firm in the writ, so as to include Morrill's name, and a copy of the amended writ was served upon Morrill personally at the place of business of the firm. Morrill appeared and pleaded an exception to the form, based, among other grounds, upon the alleged insufficiency of the service, the return day of the original writ being past before the service of the amended writ.

The Superior Court at Sherbrooke (Doherty, J.) dismissed the exception, "considering that the allegations of the said *exception à la forme* are in the nature of an opposition, or protest against the interlocutory judgment of this Court, granting plaintiffs' application to amend the writ of summons in this cause, that plaintiffs' proceedings under and since said amendment are legal and regular, and that the said

allegations are irregularly pleaded in this cause, and moreover insufficient in fact and in law." The Court of Review at Montreal reversed this judgment, "considering that the exception *à la forme* filed in this cause is well founded and should have been maintained, and that the plaintiffs' action should have been dismissed with regard to the said John F. Morrill." It was from the latter decision that the plaintiffs appealed.

DORION, C. J., for the Court, held that the original judgment should have been maintained, and that rendered by the Court of Review must, therefore, be reversed. The grounds assigned by the judgment in appeal are as follows:

"Considering that the writ of summons in this cause was properly amended, leave having first been obtained from the Superior Court, by inserting the name of the respondent John F. Morrill, as being one of the partners in the firm of H. S. Beebe & Co., defendants in this cause, and that the amended writ and declaration were duly served on the said respondent;

"And considering that the said respondent has pleaded to the action, and has suffered no prejudice or injury from the said amendment being so made, and that the exception *à la forme* by him filed is not well founded;

"And considering that the appellants have proved the material allegations of their declaration, and the said respondent has failed to prove the allegations of his several pleadings;

"And considering that there is error in the judgment rendered by the Judges sitting in Review on the 30th September, 1876, reversing the judgment by the Superior Court sitting at Sherbrooke on the 6th of April, 1876, and dismissing the appellant's action as against the said respondent John F. Morrill:

"This Court doth reverse and set aside the said judgment of the 30th Sept., 1876, and doth confirm the said judgment rendered by the Superior Court on the 6th April, 1876."

Judgment reversed.

Brooks, Camirand & Hurd, for Appellants.
Terrill & Hackett, for Respondent.

NOTE.—The following appeals, also decided on Dec. 14, do not require special notice:—

BARTHE & BOYER. — Judgment granting the insolvent Boyer his discharge, was confirmed.