

been made by Langley & Cook to the plaintiffs of the money supposed to be due by the Corporation of the Town of St. Boniface, and that the work done by Langley & Cook was not in accordance with the contract, and that the plaintiffs had received from the town corporation as much as they were willing to pay, and had given credit for the money received. One Bangham, formerly in the employ of the plaintiffs, had assisted Langley & Cook in the second contract with the municipality, and appears to have had some contractual relationship with Langley & Cook; but the agreement between him and that firm was not filed.

After this, Carson, the bookkeeper, was sent to St. Boniface to assist in the adjustment of the accounts with the municipality. The town corporation required wages to be paid, as Langley & Cook had deserted the contract; and it is suggested that part of the moneys passed through Carson's hands. It is not made to appear that he received any more money than was transmitted to the plaintiffs, for which credit is given. It is suggested that the municipal accounts shew that he received some larger amount, and out of it paid the wages; but this is mere suggestion; it is not proved. See questions 154 to 157. Carson is not now available, and the defendants have tendered no evidence whatever going to shew that Carson received a dollar more than the amount for which credit is given.

The defendants now appeal upon several grounds, but before me only argued that relating to the moneys said to have been received and disbursed by Carson; counsel for the defendants stating that the onus was not upon him to attack the account.

In this I think he is entirely in error. I think that the onus is upon him to shew that the plaintiffs have received more than the amounts for which credit has been given. Payment is and always has been a defence; and the onus is upon the defendants; this quite apart from the fact that no surcharge has been filed, as required by the Rules; and possibly, according to strict practice, this issue was not open before the Master. No application is now made for indulgence; the defendants being content to base the appeal entirely on what they concede to be their strict rights.

The appeal is dismissed with costs.