

## Correspondence.

### CASE LAW; OR, AUTHORITY v. PRINCIPLE.

TO THE EDITOR OF THE CANADA LAW JOURNAL:

The judgment rendered in the Division Court case, *Masson v. Wicksteed*, reported in the LAW JOURNAL of 16th March last, presents a humorous aspect, as showing how the whole machinery of the law may be diverted for several days, employing two County Court judges and two barristers; and detaining a whole host of fretting lawyers and witnesses, in order to decide judicially what any business man of fair intelligence and experience would have decided practically in a few minutes. This judgment, really rendered by two County Court judges of Ontario, residing in Ottawa, because their views thereon were known to coincide, furnishes also a melancholy example of the evils resulting from a long familiarity with technicalities rather than principles; evils springing from want of a sound training in the principles of the law, as well as case law; a training which would encourage reflection and give the power, and confer the habit of thinking and judging for one's self, and not relying blindly on the judgment of others; an education which would teach that cases in law when decided only establish principles, and not iron rules. *Revenons à nos moutons* or to the case of *Masson v. Wicksteed*, as decided lately by Judge Lyon, in the Division Court of Ottawa.

The defendant, president of an incorporated company, in obedience to a resolution of the Directors, draws a cheque in the form and manner usual to most companies, in favour of McCulloch, a former servant of the company, and post-dates it. Masson discounts the cheque; but when it is presented at the bank, the answer "no funds" is returned. Masson is paid cash by McCulloch, and the cheque is returned to McCulloch. McCulloch by his solicitor, Mr. Code, should then have sued the company on the cheque or for work and labour done, etc., because, irrespective of the manner in which the cheque was drawn out, the cheque had been accepted all through as being that of the company, by McCulloch, Code, Masson, the bank and the directors of the company.

But the company was virtually insolvent, and the president was a better bird to pluck; and so an action was brought against him personally.

The argument advanced in court and in chambers was as follows: "Several cases decide that a post-dated cheque is an inland bill of exchange; several cases declare that bills of exchange drawn by a company should have a particular usual form; this particular post-dated cheque has not that particular usual form; therefore it cannot be the company's cheque, therefore it must be the drawer's personal cheque."

The two Carleton county judges agreed as to the correctness of the above