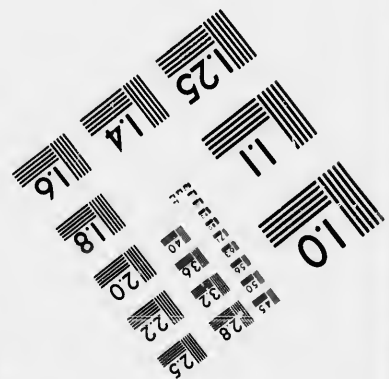
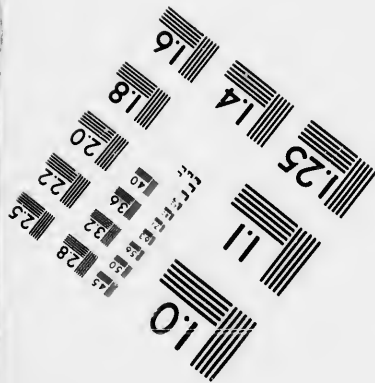
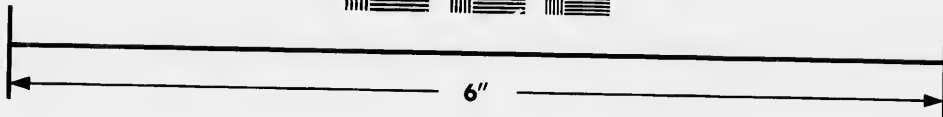
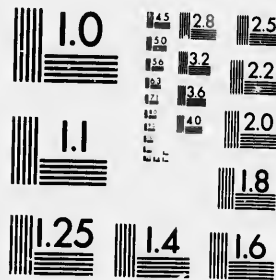


**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

**CIHM
Microfiche
Series
(Monographs)**

**ICMH
Collection de
microfiches
(monographies)**



Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

© 1993

The copy filmed here has been reproduced thanks to the generosity of:

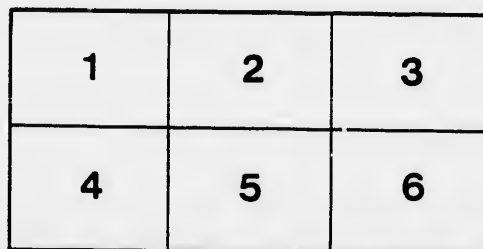
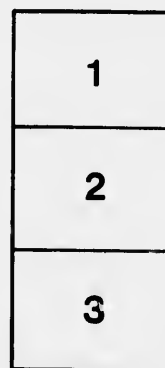
Législature du Québec
Québec

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol \rightarrow (meaning "CONTINUED"), or the symbol ∇ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:



L'exemplaire filmé fut reproduit grâce à la générosité de:

Législature du Québec
Québec

Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole \rightarrow signifie "A SUIVRE", le symbole ∇ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.

10

THE SEATH
FORGERY CASE.

The Union Bank of Lower Canada

VS.

ROBERT MCCREADY

B.

1000

1

2

1000

I

A

H

THE SEATH FORGERY CASE

Judgment in the Superior Court.

THE NOTES DECLARED TO BE FORGERIES

ACTION OF THE UNION BANK OF LOWER CANADA

vs.

ROBERT McCREADY,

DISMISSED WITH COSTS.

DEAR SIR,

The interest that has been taken in this case since it came before the Courts (Civil and Criminal), the extraordinary efforts on the part of Mr. Alexander Seath and his Counsel, to establish the genuineness of the Promissory Notes in question, and the contradictory sworn testimony of the principal witnesses are of such importance to the commercial public, that I deem it proper, as well as an act of justice to myself, to publish herewith a full *verbatim* report of the Judgment delivered in the Superior Court, on Saturday, the 14th day of April last, by His Honor Justice Rainville, declaring the Note sued upon a Forgery, which will, I trust, set at rest all further conflicting opinions in this *cause célèbre*, and place me right in the regard of all honest thinking men.

I am,

Yours respectfully,

ROBERT McCREADY.

MONTREAL. 17th April, 1883.

JUDGMENT DELIVERED IN THE SUPERIOR COURT,
MONTREAL,
SATURDAY, 14th APRIL 1883.

HON. JUSTICE RAINVILLE PRESIDING.

Plaintiff sues Defendants, Robert McCready and Alexander Seath, on a note dated at Montreal, 6th July, 1882, payable at the Moisons' Bank six months after date, amounting to the sum of \$1,832 40, signed by Robert McCready and endorsed by Alex. Seath.

Defendant McCready alone pleaded to the action. His defence was a general denial of the signature on the note, and according to law was accompanied with an affidavit, denying the same.

The only question to be decided in this case is whether the note, the payment of which is demanded by plaintiff, bears the signature of defendant Robert McCready. The plea of McCready been produced, the burden of the proof rests upon the plaintiff, and it is according to well established jurisprudence and the doctrine laid down by all authors that in such cases the plaintiff is bound to make proof much stronger than in ordinary cases.

Plaintiff examined a number of witnesses, amongst others, Defendant McCready himself, Seath, Seath's bookkeeper and the managers of the Union Bank and Moisons Bank.

The proof establishes that the defendants had for several years past considerable transactions together; and that in the month of October, 1880, Seath, being then in financial difficulties, obtained from McCready seven accommodation notes, payable at different dates, amounting in all to more than \$20,000.

These notes were in part renewed, maturely, and part extinguished by notes which the house of Robert McCready gave Seath in payment of goods bought from Seath by McCready. In other words McCready gave Seath promissory notes for goods bought, and by this means, Seath met the accommodation notes in part and renewed for the balance.

McCready had Seath give him in exchange for these accommodation notes, notes of a similar nature as an acknowledgment of the transaction.

Things continued in this way during 1881 and part of 1882.

McCready pretends that all the accommodation notes had been extinguished in May, 1882, with the exception of one which he had signed about the 9th May payable at a later date.

In June, 1882, defendants had a difficulty relative to a note for \$2 600.

It is useless to enter into the details of this difficulty. It is sufficient to say that McCready pretends that he understood he only had signed the note for some six hundred and odd dollars, and the note at the time it fell due was found to amount to \$2,600.

Can this be a mistake on the part of McCready? We know not. But it is shown that Seath admitted the note to the extent of \$2,000 was an affair of his own, and that McCready was not responsible for that, but only for the \$620. At all events, the note was paid.

The origin of the difficulty relative to the note in question in this case, goes back to the 4th September, 1882.

According to the pretensions of McCready, he (McCready) knew on this day that the defendant, Seath, had forged his signature for a considerable sum, and the following is what happened:—

A note for \$1 811 20 became due that date (4th September, 1882), held by the Union Bank here, payable at the office of the Moisons Bank. No provision having been made for its payment at the Union Bank, the note was duly presented at the Moisons Bank, as McCready kept an account at said Bank, upon presentation of the note the officials of the Moisons Bank thought it would be well to notify McCready of this.

They accordingly despatched a messenger to McCready's place of business, and it appears by the proof that Seath was already at McCready's office and had previously informed

McCready of the fact that such a note was at the Bank.

McCready, according to the evidence, repudiated the note, and immediately Booth, his bookkeeper, went to the Union Bank and notified Mr. Nash, the cashier, of the fact that the note was not an authentic one.

Mr. Nash, the cashier of the Union Bank, acting upon the intimation he had received either from Booth or others of his employees, proceeded immediately to McCready's office, where he found Seath.

The evidence is a little contradictory, inasmuch as Nash does not remember having seen Booth and received from him the intimation that Booth asserts to have given concerning the note. But, according to all circumstances, there is no doubt that when Nash left the bank to go to McCready's he was under the impression that there was something irregular relative to the note. Plaintiff has insisted upon the fact that McCready had refused formally, at his own office on this occasion, in answer to a question put to him by Nash, to state that the note was false; but he said simply enough to Nash to let him understand that the note was not his. And I have no doubt that when Nash left McCready's, after being promised by Seath that the note would be met, I have no doubt, I say, that Nash was under the impression the note was not all right.

Seath was present at this meeting between McCready and Nash and heard the question which Nash directly asked McCready, and the latter's answer, viz: "See Mr Seath," and it was in reply to this remark, though slightly evasive, that Seath answered that the note would be paid.

The next day the Manager of the Molsons Bank interviewed the Defendant, McCready, in reference to the note then under discount, and showed him three other notes which have been filed in this cause.

I am convinced, according to the evidence, that defendant immediately repudiated the notes, and that notwithstanding that he did not say they were forged, he said sufficient to leave Mr. Thomas and Mr. Elliot, both officials of the Bank, under the impression that these notes were not signed by him, for if this were not the result of the conversation, what meant, then, the question of McCready to the Bank officials: "You have my signature here, compare them?"

And if it were not regarding the authenticity of these signatures, why did Mr. Elliot go and get a check of the Defendant McCready, to compare his signature with the signatures on these notes? Some of these notes have been paid since; there only remain three unpaid, which the Defendant McCready repudiates;

one of them is the note now in question, the other is in the possession of the Molsons Bank, and the Merchants' Bank have the third.

The proof made by plaintiff consists of the depositions of Seath and Paul, who both swear that the note in question was signed by McCready in their presence.

I attach no importance to Seath's deposition, for if the note is forged, that is his affair—or it is presumed to be—and it is his interest to conceal his guilt.

As regards Paul, he swears the note was signed in his presence, that is to say, in an adjoining room to that in which he was working, and he took it up from the desk after it was signed, and when McCready was present. If there had been but one note exchanged between the parties, it would be very difficult to reject this testimony, unless we believed Paul has perjured himself; but there have been so many transactions between the parties and so many notes signed, that it is difficult for me to understand how it is possible for Paul to remember specially that the note in question had been signed in his presence, when he cannot swear the same thing as regards the other notes.

There is no proof that he made any special entry of this note, and I am under the impression that he must be mistaken.

As regards the other two witnesses, Elliot and Nash, both of these gentlemen had discounted McCready's notes and seen his signature at first sight accepted the very signatures that have been repudiated as not being McCready's genuine signature.

But in their depositions, after having compared the genuine signatures with the signature repudiated, and examined notable and important differences, they both seem to be under the impression that there is a great deal of doubt as to the authenticity of the signature on the note referred to. Besides plaintiff has not tried to bring one single witness familiar with McCready's signature to make him say whether he thought or whether he could swear that the signature on the note in question was really McCready's signature.

Now here is McCready's proof; it consists of the depositions of two book-keepers. Booth, his present book-keeper, who has been in his employ for several years, and Troutbeck, who had been in his employ five or six years before, both consequently, are familiar with his signature, and both swear in the most positive manner, and without any hesitation, that the signature on the note in question is not McCready's signature, and both go even so far as to say that they think it would be impossible for McCready, from the knowledge they have of his way of writing, to sign as this note is signed.

Four other witnesses have been examined, who are also perfectly familiar with McCready's signature from having seen it many times. His two brothers, also Gougeon and Mullarky, all swear in the most positive manner that the signature in question is not defendant's signature, and they show notable differences which exist between the veritable signature of defendant and the one in question.

In this case at least 300 genuine signatures of defendant have been exhibited, and if we proceed by comparing the writing, I do not see how it can be possible for any misunderstanding as regards the nature of these signatures. Four notes besides the one in question in this case have been produced and repudiated by McCready. The signature on the five notes were evidently done by the same hand and have such a striking resemblance in them that one could almost say they had been lithographed. On the contrary, in all the veritable signatures of McCready, there are differences that are remarked in all genuine signatures. The principal and notable differences between the genuine signatures and those repudiated, consist in the following: In writing his signature, the defendant McCready writes "Robt." without lifting his pen, and this is invariable in all his signatures, except when his pen had not enough ink or else caught in the paper, which is very visible. In the repudiated signature, the letter "R" is formed by two strokes of the pen.

In the genuine signature the "M" is formed without lifting the pen. In the repudiated signatures the "M" is formed by several strokes of the pen. In the true signatures the marks under the small "c" in "Mc" are all made from left to right, *i. e.* starting from the side of "M" and finishing on the side of "c." On the contrary, in the signatures that have been repudiated, these marks are all made from right to left, and by a stroke of the pen directly inclined to the left side, *i. e.* starting from the side of the "C" and going to the side of the "M." In the genuine signatures the word "Cready" is written without lifting the pen, and this invariably. In the rejected signature on the contrary the pen stopped after the letter "a," and then commenced a new stroke of the pen to form the "d." The formation of the two last letters "dy" is also most characteristic in the genuine signatures—it never varies in its most essential character. These letters are very differently formed in the rejected signatures. In the genuine signatures there are, with one or two exceptions, a dot under the "t" in Robt., and there are not any in the repudiated notes.

The plaintiff's counsel insisted on the fact that there were considerable differences in the different genuine signatures of the defendant McCready. This fact is undeniable; there is perhaps not a man who signs twice a signature identically the same. There are always some differences which depend either on the ink, the pen, the paper or the disposition of the person who signs or even upon the position he is in. But after examining and comparing attentively more than three hundred signatures of the defendant that are filed in this case, one is easily convinced that they have altogether prominent characteristic resemblances and in these the repudiated signatures essentially differ.

The main distinctive character of the defendant's signature is that it is of an irregular hand, and sometimes trembling, while on the contrary the distinctive character of the repudiated signatures is that they are made by a steady hand and by a person having a good knowledge of handwriting. I find besides in the rest of these differences between the different signatures of defendant, the proof that they are true; I find, on the contrary, in the resemblance of the repudiated signatures to each other, the proof that they are imitated. A similar view was taken by Judge Howell in a celebrated case before the Courts in Louisiana in a case relating to the estate of John McDonough; he expressed himself as follows:—"All the witnesses agree that no two genuine signatures of an individual are ever exactly alike, while some of them make it appear that the unusual similarity in this instance can be caused only by tracing"—18 n.—La Rep.—119."

An expert, Dr. Baker Edwards, was examined; he had photographed some of the genuine signatures of the defendant, and some of the repudiated signatures, and after examining these different signatures, he is of opinion that the repudiated signatures, and among others, the one in question in this case, are not the true signatures of the Defendant. Besides this formal proof made by witnesses who know the defendant's signature, and that made by comparison of writings, there is the one made by the witness Booth, of the repeated admissions made by the Defendant Seath, recognizing that the note was forged. Booth swears in effect that about the 14th September last, at the time the first difficulty relating to these notes arose, Seath recognized that the note that was then presented by the Union Bank was false, and that later he recognized that there were notes forged to the amount of about \$10,000. An attempt was made to attack the credibility of the witness Booth. Counsel weighed heavily on the fact that Seath would not have admitted that these notes were forged.

I see nothing improbable in these admissions—quite the contrary; if the notes were forged, there is nothing more natural than that Seath would recognize the fact. For how would it be possible for him, if the notes were really forged, to make McCready and his bookkeeper believe they were genuine, and maintain this fact in their presence? Otherwise, how explain the presence of Seath at McCready's at the very moment he knew the note would be presented at the Molsens Bank, and that there were no funds there with which to pay it? Why should he be there? Why wait for Nash's arrival? Why promise to pay it the next day? If the note were genuine, he should not have been so anxious to see about its settlement?

There is, also, in confirmation of the fact that these notes were forged, McCready's letter, written 6th September, 1882, to the Molsens Bank, telling them that apart from three notes which he mentions in his letter as being genuine, if there were others there were forged notes. He said the same thing to the Union Bank, and his letter to the

Molsens Bank even goes further. He writes that apart from the three notes that he mentions as being genuine, all the other notes that Seath pretended to have been signed by McCready were forgeries. McCready was then very certain of this fact since he took upon himself to affirm it strongly. And the best proof that he was not mistaken is that the result confirmed the fact he asserted, and all other notes apart from those mentioned in the letter as genuine were repudiated and are the notes now void.

It is unnecessary for me to enter into more details on the proof. It suffices to say that the weight of the proof fell upon plaintiff, and not only did they not prove that the signature on the note referred to was the signature of McCready, but, on the contrary, the latter proved beyond all doubt that the signature in question was a forged signature.

Plaintiff's action is, therefore, dismissed with costs.

Messrs. G. B. Cramp, and W. H. Kerr, Q. C., for plaintiff; Messrs J. S. Hall, Jr., and L. N. Benjamin, for the defendant.

