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LIABILITY FOR LOSS OCCASIONED BY FRAUDULENT ALTERATION OF DRAFT.

The case of *Union Bank & Ontario Bank*, a note of which will be found in this issue, presented a very nice question as to which of two innocent parties should be made liable for the loss arising from the fraud of a third party. The judgment now rendered is that of the Court of Appeal, confirming the decision of Mr. Justice Jetté in the Superior Court, a note of which will be found in 2 Legal News, p. 132, and which is reported at length in 23 L.C.J. 66. One Deton, on the 17th September, opened a deposit account with the Ontario Bank at Montreal. On the 19th September he obtained from the Union Bank at Quebec a draft for $25 upon the agency of the Union Bank at Montreal. On the 21st September he deposited this draft, fraudulently raised in amount to $5,000, in the Ontario Bank at Montreal. The latter Bank took the precaution of stipulating that the depositor was not to draw cheques against the amount until the draft had been accepted by the Union Bank. The draft went to the Union Bank branch at Montreal in ordinary course, and this branch, having had no advice from its Quebec office, supposed it was all right and paid the money Deton subsequently obtained from the Ontario Bank $3,500 on a cheque against his deposit, and fled the country before the fraud was discovered, which was not until six days after the draft was issued at Quebec.

The question was which Bank should suffer the loss of the $3,500 fraudulently obtained by Deton. The Union Bank claimed to be repaid the whole excess over the original $25. The Ontario Bank repudiated all liability, but offered to return the $1,500 which remained at the credit of Deton in the Bank.

Mr. Justice Jetté, in whose judgment the whole case is treated in a very lucid manner, found that the Ontario Bank had taken all the care to guard against fraud that could be expected of it, and that the Union Bank, in neglecting to advise its Montreal branch of the draft, was in fault. Following, then, the principle which is admitted in the jurisprudence of England, France and the United States, that of two innocent persons the one who has been most negligent must bear the loss, the action of the Union Bank was dismissed. In Appeal, Chief Justice Dorion and the majority of the Court concurred in this view. Mr. Justice Monk did not hold the same opinion as to the negligence of the Union Bank. The forgery was only in the body of the draft, and the alteration was effected so skilfully that it was impossible to detect it. At that time it was not the practice to give advice of drafts drawn at one agency of a Bank upon another branch. On the other hand, the Ontario Bank had opened an account with a forger, and taken a forged draft on deposit, and although it stipulated that no cheques were to be drawn until the draft was accepted, it had not communicated to the Union Bank that any suspicion existed as to the genuineness of the instrument. Under these circumstances, Judge Monk appeared to think that the Ontario Bank was even more to blame than the Union Bank, and he would have maintained the action of the latter.

No precedent could be found exactly in point, but the case of *Bank of the United States* v. *Bank of Georgia*, 10 Wheaton, 333, in which the judgment of the U. S. Supreme Court was rendered by a very eminent Judge, Story, certainly bears a strong resemblance to it. The facts of that case were as follows:—The Bank of Georgia had, in the ordinary course of business, deposited with the Bank of the United States a number of bank notes, apparently issued by the latter Bank, and received credit for the deposit. These notes were subsequently ascertained to have been forged, and upon the fact being discovered, the Bank of the United States instituted an action to recover back the amount for which credit had been given. Both Banks were, of course, in perfect good faith, as in the Canadian case. Judge Story said:—"The notes in question were not the notes of another Bank, or the security of a third person, but they were received and adopted by the Bank as its own genuine notes in the most absolute and unconditional manner. * * * * *

It is bound to know its own paper, and provide for its payment, and must be presumed to use all reasonable means, by private marks and otherwise, to secure itself against forgeries and impositions. * * * * * Under such circumstances, the receipt by a Bank of forged notes, purporting to be its own, must be deemed an adoption of them. *It has the means of knowing whether they are genuine; if these means are not employed, it is certainly evidence of a neglect of that duty which the public have a right to require.* And in respect to persons equally innocent, where one is bound to know and act upon his knowledge, and the other has no means of knowledge, there seems to be no reason for burthening the latter with any loss in exoneration of the former. There is nothing unconscientious in retaining the sum received from the Bank in payment of such notes, which its own acts have deliberately assumed to be genuine." The words italicized are significant in view of the fact that the system now followed of advising drafts upon other branches would render a repetition of the Deton fraud impossible.

OBLIGATIONS OF CARRIERS.

A jury in Tennessee has awarded to Jane Brown, a colored woman, the sum of $3,000 damages against the Memphis & Charleston Railroad, for ejecting her from a first-class car notwithstanding her production of a ticket entitling her to a first-class passage. This jury, composed of white men, is more tolerant than the legislature of the State, which, it appears, has expressly enacted that "no keeper of any hotel or public house, *or carrier of passengers for hire*, shall be bound to entertain, carry, or admit, any person whom he shall, *for any reason whatever*, choose not to entertain, *carry*, or admit, to his house, hotel, carriage or means of transportation, or place of amusement; nor shall any right exist in favor of any such person so refused admission." The Railroad Company pleaded this statute, but Judge Hammond charged the jury that the Act was unconstitutional, so far as it abrogated the common law right of action for wrongful exclusion from railroad cars on roads running between two or more States, the exclusive right to make which is vested by the Constitution of the United States in Congress. It was also pleaded that the plaintiff was an unchaste person, but the Court charged the jury emphatically upon this point, that so long as the conduct of the person is unobjectionable while on the train, the carrier has no right to make any distinction based upon the good or bad reputation of the passenger.

NOTES OF CASES.

COURT OF QUEEN'S BENCH.

MONTREAL, November 24, 1880.

Sir A. A. DORION, C. J., MONK, RAMSAY, CROSS, JJ., BABY, A.J.

THE UNION BANK OF LOWER CANADA (plffs. below), Appellants; & THE ONTARIO BANK (defts. below), Respondents.

Bank Draft—Liability for loss arising from fraudulent alteration—Negligence.

The appeal was from a judgment of the Superior Court, Montreal, Jetté, J., Feb. 8, 1879, dismissing the appellants' action. The judgment below is reported in 2 Legal News, p. 132; 23 L.C.J., p. 66.

MONK, J., (*diss.*) In this case the appellants the Union Bank, Quebec, drew a draft upon their branch at Montreal for $25 without advice to branch of the fact. The holder altered the amount of the draft to $5,000, and deposited it to his own credit in his banking account with respondents, the Bank of Ontario. Respondents presented it in due course, and it was paid by the branch at Montreal without objection. After such payment the respondents paid over part of the proceeds to the depositor. Six days afterwards the appellants discovered the fraud, and demanded back the amount of the forgery.

The facts of the case are briefly as follows: The appellants, the Union Bank, at their head office in Quebec, issued on the 19th September, 1877, a draft for $25 on their branch office in Montreal, to a man calling himself Charles Deton. Deton, who was an entire stranger to the Union Bank, received this draft for $25, and altered or "raised" it so as to make it appear to be a draft for $5,000, and this alteration was so skilfully effected as to render detection very difficult, if not impossible. Deton had previously, on the 17th September, 1877, opened an account with the Ontario Bank at

Montreal. This account was opened with him at respondent's bank, to whose officers he was an entire stranger, without any enquiries as to his character, without any introduction, and without the knowledge of the manager, by one of the bank clerks. On the 21st September Deton, by his office boy, deposited this draft, "raised" or altered to $5,000, in the Ontario Bank, and it was placed to his credit on that day, as of that amount. Respondents stamped it with the stamp of their Bank, showing it to be the Bank's property, and next day, 22nd September, 1877, presented it to appellants for payment, and this sum was at once paid without question to respondents by the appellant's manager. Deton drew out, by cheque, $3,500 from the Ontario Bank on the 22nd September, the same day that the appellants paid the draft in question, after which he absconded and has not since been heard of. Appellants brought their action against respondents in the Court below to recover the sum of $4,975, being the amount by which the $5,000 paid by them exceeds the draft of $25 really issued to Deton; and in their declaration they allege that the defendants, representing the draft to be genuine, presented the fraudulently altered draft to appellants for payment, and obtained payment without giving any consideration or value therefor.

In the consideration of this case it is evident at the outset that the appellants are in the position of parties who have paid by error what they did not owe; and contend that they have a clear right to recover it back, unless the respondents can show that this case is an exception to the general rule, that what is paid without cause can be recovered back. C. C. art. 1047. To this demand respondents pleaded: That they were ignorant whether the draft in question was originally issued to said Deton for $25 only; but that when the draft was placed in their hands for collection, it purported and appeared to be, and had in all respects, the genuine and *bona fide* appearance of a draft for $5,000; and, as in appellants' declaration set forth, the alteration, if ever made, had been so skilfully done as to render it impossible to be detected. That Deton was not a regular customer of the respondents, having only opened a deposit account with them a short time previous to depositing with them the draft in question. That on the 22nd September, 1877, Deton had brought the respondents the draft in question, and requested them to receive it on deposit, which they agreed to do; but notified him that they would not allow him to draw, nor would they accept his cheques, against the amount thereof, until the same had been accepted and paid by the appellants. That thereupon respondents in good faith, and in the course of their transactions with the appellants presented the draft for payment, and the appellants accepted and paid the same without demur, and thereby confirmed the respondents in the belief that the draft was genuine; and after receiving the amount, the respondents paid over to Deton $3,485 thereof, leaving a balance of $1,515 which Deton had not received, and which they had tendered back to the appellants on being informed of the change which had been made in the draft, but without waiver of their rights in the premises; which tender they repeated in their plea. That appellants were by law bound to recognize their own drafts and to know the amount thereof, as they might easily have done by the exercise of ordinary care and diligence; and that as they had accepted and paid the draft to the respondents, the latter were justified in paying over the amount thereof to the person from whom they had received the draft; and that the appellants cannot recover from the respondents any portion of the amount so paid over. By their conclusions the respondents prayed *acte* of the tender of the $1,515, and the dismissal of the action. They also filed a general denial of the allegations of the appellant's demand.

Upon these issues thus formed, the Union Bank proceeded to the adduction of proof, and in regard to the evidence there exists very little doubt, in fact no controversy. It was established, and the judgment recognizes, that the draft was issued by appellants for $25, and was altered to $5,000. It is also established, beyond question, that respondents presented this draft, which bore the endorsation of Charles Deton, and the stamp of the Ontario Bank, to the appellants' office in Montreal, and were paid the amount. There was nothing to indicate to appellants that respondents were not complete owners of this draft, of which they were holders. The question to be decided is

whether the Ontario Bank is bound to repay the amount paid on the forged draft. The Court below decided this question in the negative, and from that decision the present appeal is taken. At the very outset it is proper to note that both the Banks acted in this matter with perfect good faith. Nothing in the evidence or in the circumstances of the case, discloses any attempt at surprise, or any want of candor or of the most scrupulous integrity and fair dealing on the part of either of the Banks. It may be urged that there was a want of diligence, perhaps there may have been a certain amount of incaution on the part of the respondents, but no shadow of unfairness or insidious device can rest on any of the incidents which led to the institution of the present action. The suit is to recover the sum of $4,975 paid by the Union Bank to the Bank of Ontario in error on a forged draft, and the latter institution resists their claim, contending that if the money was paid by error, it was through the negligence or want of proper diligence on the part of the Union Bank. Such in plain terms are the issues between the parties, and in view of the facts it must be conceded that the decision of the case is not without difficulty.

Before, however, proceeding to consider the law and the proof in their bearings and application it may not be amiss to advert briefly to two points of importance in considering the contention raised between the appellants and respondents. It is urged by the latter that the head office at Quebec did not advise the Branch at Montreal of the issue of the draft in favor of Deton for $25. Had this precaution been taken the mistake could never have occurred. This is quite true, and no doubt it is a fact of some significance in the case. But it must on the other hand be borne in mind that the draft in question was for a very small amount, and it is also proved that at that time it was not the general custom among Banks to advise such drafts as the one given to Deton. Some indeed observed this precaution, but it was by no means a universal practice at that time. I believe it is so now. I cannot think, therefore, that in the present instance this omission can be regarded as an act of negligence, or even a want of due and proper diligence on the part of the Union Bank. I believe some of my colleagues are of the same opinion. There are some French authorities which sustain the respondents' view in this connection, but they do not apply to this case, and there is no English decision to justify such a pretension. 2. It is contended by the respondents that the appellants were bound in law to know the signature of their officers to the draft, but in the present instance they were equally held to know the contents in the body of the draft—in other words, to detect the forgery, by which the draft was "raised" from $25 to $5,000, and in the case under consideration the change was effected in such a way as to defy the most attentive and skilful scrutiny. This is conceded on all hands. I have no hesitation in expressing my belief that such a pretension as the above is unsustained by any principle of law or by any decision either in France, England or the United States. There may be such rulings in regard to bank bills in circulation, but the doctrine does not apply to promissory notes or to drafts, whether drawn on a branch bank, as in this instance, or on third parties. The English law governs in this matter, and we must look to the English decisions and to American jurisprudence, embodying the principles of these decisions, to guide us in adjudicating on the issue raised here. I have not been able to find any case exactly in point, but some of these authorities are instructive, and are, moreover, in a certain degree applicable to the case under consideration. They are cited in the appellants' factum. [His Honor cited Daniel on Negotiable Instruments, vol. 1, p. 399, sec. 540; vol. 2, p. 327, sec. 1363; vol. 2, p. 325; Parsons on Bills, vol. 2, p. 601; Bank of Commerce v. Union Bank, 3 Comstock N. Y. Rep., p. 230; Story on Bills, par. 262-3, and notes; Marine National Bank v. National City Bank, 59 N. Y. Rep., p. 68; Espy v. Bank of Cincinnati, 18 Wall. 604, and proceeded as follows:—]

So far as these authorities and decisions go, the law as stated seems to me in favor of the appellants. But we must go still further in order to determine whether the law thus enunciated applies to the facts and circumstances of the present case. It is beyond doubt that the amount of this forged draft in the body of the instrument was received by the Ontario Bank in error on a draft by the head office of the appellants at Quebec on the branch house.

Deton, the forger, who deposited the draft in the Ontario Bank, has fled, and no practical recourse can be had against him, although he is the debtor of the Bank of Ontario for the portion of the $5,000 they paid him on his check. Under these circumstances, is it the appellants or the respondents who are to lose this amount? In the last analysis and in the decision of this case of course this question presents itself for careful consideration. Deton was not what is to be considered as a regular customer of the respondents, though he had on the 17th September opened a deposit account for a small amount with them. On the 21st September he sent his office boy, as he is styled, with the forged draft. The bank immediately carried the amount, apparently without inquiry, to the credit of Deton's deposit account, intimating, however, to the office boy that it was not to be checked out before the draft was paid. Thereupon the draft was stamped as the property of the Bank of Ontario, and sent over to the Union Bank for payment. There it was immediately paid. Six days afterwards the forgery was discovered, and the amount of the draft, less $25, was claimed from the Ontario Bank as having been paid by the Union Bank in error, or without proper precaution. The Ontario Bank opened a deposit account with a forger; it is true the man and his character were unknown, and afterwards in good faith they became his agent for the collection of a forged draft, which was presented to the Union Bank with the Ontario Bank stamp upon it, intimating that it was their property, or purporting to be such. The draft when presented was paid, and the forgery in the body of the instrument was so skilfully perpetrated that no scrutiny could detect it. Under these circumstances, which of the two parties is guilty of negligence or want of reasonable diligence? Surely it cannot be said that the Union Bank is to blame, and if not, and since they are not, we are forced to the conclusion that to the Ontario Bank, giving them credit for all the good faith in the world, must be imputed some degree of negligence, and consequently I hold that they are liable. This liability, it may be urged, the respondents have themselves admitted by tendering to the Union Bank $1,515, part of the amount of the draft then at Deton's credit in the Ontario Bank. Their reserve of their rights in making the tender has no significance whatever in law. They could not mean to reserve their right to recover back the $1,515 tendered, and I am of opinion this was under the circumstances, a tender of a certain sum on account—nothing more and nothing less. Had the draft been payable ten days after sight and accepted, and before the draft matured, the forgery had been discovered, would the Union Bank have been liable to pay the amount to the Ontario Bank or to Deton for whom they were acting, and to whom they might have paid the amount of the draft before maturity or payment? I think not. The Ontario Bank was not without some vague suspicion about this draft—inasmuch as they informed Deton's office boy that checks against the amount would not be accepted till after the draft was paid. This was a wise precaution, but having these misgivings it is not a little surprising, at all events it is to be regretted, that they did not communicate them to the Union Bank. Had such reasonable amount of diligence been observed this case would probably never have come before this Court. Deton was not only an entire stranger, but it does not appear that he ever made his appearance at the Bank of Ontario after the date of his deposit on the 17th September, but he acted, or rather he operated exclusively, through a third party, his so-called office boy. This off-hand way of dealing with large sums in regard to unknown individuals, having no position and appearing more in the character of vagrants than otherwise, cannot be accepted. It won't do; and common sense, as well as sound principles of law, should, I think, determine the case in favor of the appellants. I would reverse the judgment of the Court below, but I am alone of that opinion.

Sir A. A. Dorion, C.J., (after stating the facts said): The question is, who should bear the loss? The general rule is that every one who passes, innocently or otherwise, a forged commercial instrument, is bound to account for it. Two exceptions, however, have been made to that rule; first, if a bank accepts a forged cheque of its own customer, and the forgery consists in the signature of its customer, it cannot recover the money, because it is bound to know the signature of its own customer. But that does not apply to the writing in the body of the instrument, because the bank is not

bound to know the hand writing of that part. The second exception I take to be this, that, if a bank takes its own bank bills, and they are forgeries, it cannot recover what it has paid for them. I find only one case, decided by Judge Story, on this point. He says a bank is bound to know its own paper, and if it accepts forged notes it is responsible. That decision does not reach the present case; this is not a bill of the Union Bank, but it is a draft issued by that bank, thus coming very near to the case decided by Judge Story, though not quite like it. The jurisprudence being deficient on the point, we must see what principle can be found for our guidance. The Ontario Bank did not cash this draft at the time it was received. They took it on the special condition that it must be paid by the Union Bank before any cheques were drawn against it. Therefore, if the Union Bank had not paid the draft, they would not have lost anything. The Ontario Bank was misled by the only party who could know what was the amount of the draft. The Ontario Bank took the precaution to ascertain whether it would be paid, and it was led by the Union Bank into the error of believing that the draft was really a genuine draft. It is a principle of both English and American law that where one of two innocent persons has to suffer a loss, the one through whose fault or carelessness the loss has occurred must bear it. The party in fault here is not the Ontario Bank. If this bank had paid the money at once, the loss would not have occurred in consequence of the information given by the Union Bank; but the loss was subsequent to the false information given by the Union Bank, and under these circumstances it is clear to my mind that the loss must be borne by the Union Bank. No doubt, it may be argued that the Union Bank was not bound to know the handwriting in the body of the draft, but only the signature, but there is no decision that goes to that extent. If we take the French law, there is no doubt that the Union Bank would have to lose. (His Honor cited Pothier and Pardessus.) But it is a case governed by English rules, and I think that while there is no case quite in point, the principles of English law lead us to the same conclusion.

Ramsay, J. This case has to be decided by the law of England as it stood on the 30th May, 1849, Art. 2340 C.C. The date is unimportant in the present case. It seems to be unquestionable that according to that law the acceptor of a bill, the signature of which is genuine, but altered as to the amount since it passed from the hands of the drawer, and who had paid the same, could recover back the amount he had overpaid owing to the forgery. The cases of *Smith* v. *Chester* (1 Durn. & E. 654), and *Jones* v. *Ryde* (5 Taunt. 487), support this pretension. In the latter of these cases, Chief Justice Gibbs points out the distinction between the case before him and the case of *Price* v. *Neale* (3 Bur. 1354) and the case of *Baillie* v. *Gingell* (3 Esp. 60.) It is quite evident, on general principles, that this must be true. The acceptor or payee got no value for his money, and consequently he had a right to recover back what he had paid, precisely on the same principle that any one who had received a counterfeit shilling from another by mistake could recover back his money. But it is contended that the acceptance differs from payment in this, that the acceptance is a deliberate recognition and a warranty of the whole bill. If this proposition be true, then there is an end to the discussion, but the authorities cited by appellant contradict this pretension. Daniel distinctly says the acceptor guarantees the signature and not the body of the bill. The one he has means of knowing about, the other he has not. The same doctrine is laid down in the case of the *National Bank of Commerce* (in New York) & *The National Mechanics' Banking Association* 55 N.Y. Rep. 211, cited by respondent. Indeed, it is difficult to understand how any other doctrine could prevail. Starting from this point, appellants contend that they were not bound to know that the draft had been altered, that their acceptance covered only the signature, which was genuine. They say, moreover, that they were led into error by the fact that the draft had passed by the Ontario Bank,—that if the unknown Detcn had presented the draft himself they would have made enquiry, which would have resulted in discovery. In a word, they say that the Ontario Bank had passed upon them a forgery, and that, therefore, the respondents were obliged to return them the money and exercise their recourse

against Deton. This position is doubtless very strong, and if it had been supported by authority I should not have felt disposed to alter the rule. Nevertheless, I do not think the argument perfectly sound. As we have already seen, the acceptor is held by his acceptance so far as to recognize that the signature, which he is presumed to know, is genuine. It seems to me that when a Bank is dealing with its own paper it should be presumed to know not only the signature but the whole document. It was the appellants who set the whole thing in movement, and by the signature of their cashier gave currency to a draft which they themselves did not know was forged. They were so secure that they ordered their branch to pay "with or without advice." It seems to me that any other doctrine would lead to inconvenience, and that if this does not hold good for drafts, it would be difficult to say why the rule should obtain with regard to bank notes. In the case already cited from the 55 New York Reports, Rapallo, J., seemed to hold this doctrine, and I know of no authority which supports the contrary. I would not base this on the idea of there being negligence, but on policy. It does not appear that the failure to advise amounts to negligence. The evidence shows that advice was not considered necessary before this case happened, and it is manifest the miscarriage of the letter of advice could not alter the responsibility. I am therefore inclined to confirm. But in addition to this there is the fact that the Ontario Bank did not act without the greatest precaution. They did not pay away their money until they had been themselves paid by appellants.

Judgment confirmed.

Lunn & Cramp, for appellants.

T. W. Ritchie, Q.C., Counsel.

Abbott, Tait, Wotherspoon & Abbott, for respondents.

MONTREAL, Nov. 12, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ., BABY, A.J.

RYDER (plff. below), appellant, and VAUGHAN (deft. below), respondent.

Assumpsit—Evidence.

The appeal was from a judgment of the Superior Court, district of Iberville, Chagnon, J., Feb. 27, 1879, dismissing the appellant's action.

In appeal the judgment was confirmed unanimously.

RAMSAY, J. This action was in assumpsit for goods sold and delivered at defendant's request. At the argument it was maintained that what was proved was a *quasi*-contract; that one Parker had acted for defendant and in his interest; that his gestion had turned to defendant's profit, and that therefore defendant was liable to plaintiff for what he had furnished to Parker to use for defendant. It is unnecessary to examine whether this has been proved or not, for such proof could not apply to an action in assumpsit. The action *ex-quasi contractu* is a very special one. I think the appeal should be dismissed.

Judgment confirmed.

R. & L. Laflamme, for appellant.

Archambault & David, for respondent.

MONTREAL, Nov. 12, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ., BABY, A.J.

MASSÉ (plff. below), appellant, and GRANGER (deft. below), respondent.

Sale—Evidence.

The appeal was from a judgment of the Superior Court, Montreal, Johnson, J., May 31, 1878, dismissing the appellant's action. The judgment was as follows:

"The Court, etc....

"Considering that the only proof respecting the extent of power of J. Lespérance to act for defendant is that made by the defendant herself;

"Considering that there is no evidence of any sale by the plaintiff to the defendant, except the evidence of Lespérance, which is vague and unsatisfactory;

"Considering that by the present action, a sum of $347 is sought to be recovered, which is alleged to be due to the plaintiff, and to appear to be so due by an account said to be produced;

"Considering that no account is produced, and no time or place, or specific thing, or sum certain appears proved;

"Considering that the general account sworn to by the witness Lespérance, is an account for

which he had no power from the plaintiff to bind her in respect to the purchases he mentions; and that by his evidence he expressly admits he had no power from defendant to buy for her on credit from plaintiff;

"Considering that witness Lespérance gave his evidence in a highly excited and confused manner, and his statements are not reliable, even as far as they go;

"Considering that the whole number of animals bought by Lespérance was one hundred and fifty, and he divided them with his brother, as he says, and charged defendant with the half of each, which was a proceeding for which there was and is no appearance of authority from the defendant;

"Considering that no account is shown by Lespérance of his dealings;

"Considering that it results from the evidence on that head that the only power given by the defendant to Lespérance was a power to buy with money furnished by defendant, and that he was forbidden to buy on credit;

"Considering the allegations of declaration not proved, doth dismiss plaintiff's action, with costs distraits, &c."

RAMSAY, J. This is purely a question of evidence, and the point on which it turns is not the same as that involved in the case of *Morton & Phillips*. Respondent keeps a butcher's stall, and one Lespérance bought and sold for her. After Lespérance left her service appellant brought an action for a considerable sum ($347) for the balance of an account, and he produced Lespérance as his witness to prove the account. He said that Mrs. Granger owed this money, but he could give no details of any kind, either as to quantities received, prices stipulated, or payments. This is not sufficient to bind the appellant, and the judgment must be confirmed on the second *considérant* of the judgment of the Court below, namely, that there is no evidence of any sale by the plaintiff to the defendant, except the evidence of Lespérance, which is vague and unsatisfactory.

Judgment confirmed.

Duhamel, Pagnuelo & Rainville, for appellant.
Archambault & David, for respondent.

MONTREAL, Nov. 4, 1880.

Sir A. A. DORION, C.J., MONK, RAMSAY, CROSS, JJ., BABY, A.J.

MORIN & HOMIER.

Failure to put in new security within the delay allowed.

Motion by respondent to dismiss the appeal, the appellant not having put in new security, as ordered, within the delay allowed.

The COURT granted the motion.

Piché & Surrazin, for appellant.
Archambault & David, for respondent.

GRANT & LAVOIE.

Costs—Congé-Défaut.

Application for *congé-défaut* and costs for motions which had been served on the applicant and not made.

The COURT rejected the motion as to the costs, saying that this had always been refused.

APPOINTMENTS.—Hon. John F. McCreight, Q.C., and Hon. A. R. Robertson, Q.C., of Victoria, B.C., to be puisné Judges of the Supreme Court of the Province of British Columbia. L. H. Davies, Esq., of Charlottetown, P.E.I., to be a Queen's Counsel. J. G. Bourinot, Esq., to be Clerk of the House of Commons, vice A. Patrick Esq., superannuated. Hon. J. A. Mousseau, Q.C., M.P. for Bagot, has entered the Ministry as President of the Privy Council; and Hon. J. P. R. A. Caron, Q.C., M.P. for Quebec County, as Minister of Militia and Defence.

A WELL-MERITED TRIBUTE.—The *Gazette*, referring to the judgment delivered on Tuesday last by Mr. Justice Johnson in the Berthier Election case, says:—"He (Mr. Justice Johnson) has the happy faculty, which unfortunately is not universal, of separating from the case all extraneous matter, and bringing the mind down to the specific points upon which a decision is necessary, or from which particular principles may be derived. And on no occasion was he more happy than on the present. The hundreds of interested gentlemen who crowded the court room on the occasion of the delivery of the judgment, enjoyed a treat such as is rarely furnished within the dry precincts of the Court House. The clear and graceful diction, the charming voice, and the pure elocution, held the listeners for the hour and a-half occupied in the delivery of the judgment, as by a charm, and sent them away proud of the judiciary that numbered among its members such a Judge."