The Legal News.

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COURTS OF APPEAL.

We have lately received a pamphlet copy of the speech delivered by Mr. Blake in the House of Commons, during the session which has just come to an end, on the bill to abolish the Supreme Court. We have not previously referred to the renewed proposal to do away with this tribunal. It was made in 1879, was repeated this year, and may again be agitated. We look upon such a bill simply as a mode of giving expression to the prevalent dissatisfaction at the failure of the Supreme Court to come up to the expectations of the bar, more especially in the Province of Quebec, and we do not anticipate any marked improvement for a few years to come. But we agree with much which Mr. Blake has to say as to the necessity for such a Court. We agree that a great confederation like Canada, almost independent in its law-making powers, and constantly rising in the rank of nationalities, ought not for ever to look to English lawyers on the other side of the Atlantic for the correct interpretation of its laws and statutes. We agree that it is a great advantage to have a supreme tribunal within a few hours' journey by rail of the places where the parties reside and where the great bulk of litigation arises. We think, too, it is a great advantage to suitors to be able to have their cases argued at small expense by the same lawyers that have watched them from the beginning. We might go further, and adduce some reasons which Mr. Blake has omitted to mention, why the costly appeal to England should be replaced by the far less expensive resort to Ottawa. It is well known, for instance, that a litigant of long purse and unyielding disposition, even after he has been worsted in the highest Court of the Province, can frequently so intimidate his opponent by the threat of an appeal to the Privy Council, that the latter will abate considerably from his just pretensions—pretensions supported by the Courts up to that stage—rather than be dragged into further expense, and be kept still longer in anxiety.

In one particular Mr. Blake's statistics are slightly misleading. He adduces the fact that up to 1878 there had been twenty-three appeals to the Supreme Court from the Province of Quebec, as against nineteen from Ontario—although Ontario (he adds) has a larger amount of litigation than Quebec. It is easy to show, assuming the correctness of these figures, that they are far from establishing that the Supreme Court enjoys the unbounded confidence of suitors in the Province of Quebec. We take Mr. Blake's figures for the purpose. He says the number of decisions by the Ontario Court of Appeal in equity cases is from twenty-five to thirty in each year. He does not give the number of decisions of the Court of Appeal in common law cases. But we presume the total number of decisions by the Court of Appeal will not exceed seventy-five. Now the total number of decisions by the Quebec Court of Appeal is about two hundred in each year. If we take the period referred to by Mr. Blake ("up to 1878") to embrace two years, we get this result—that whereas in Ontario there were nineteen appeals to the Supreme Court from about one hundred and fifty decisions of the Ontario Court of Appeal, in Quebec there were only twenty-three appeals to the Supreme Court from about four hundred decisions of the provincial Court of Appeal. Quebec, therefore, in proportion to the total number of decisions by the highest Court of the Province, sends to the Supreme Court less than one half the number of cases that Ontario sends there.

There is one portion of Mr. Blake's remarks to which we have much pleasure in directing attention, because it supports and even goes beyond what has already been advocated in our pages. He says: "With reference to these two Provinces (Ontario and Quebec), I quite agree, situated as the Supreme Court is, geographically, to both of them, that we may hope for the arrival of the day when local legislatures shall abolish their intermediate Courts of Appeal." This would leave simply the Court of first instance (with us, the Superior Court) and the Supreme Court. That is the system in the Maritime Provinces, and in Manitoba and British Columbia. We have not gone so far as to urge that we should be limited to the

Court of first instance in this Province; but we have insisted that the existence of *two* intermediate Courts of Appeal—the Court of Review and the Court of Queen's Bench sitting in Appeal—is an excess of precaution against erroneous judgments. The time for the abolition of the Court of Review has arrived, and any delay in carrying out this necessary measure will be a positive injury. The review was intended originally as a cheap appeal for cases from the rural districts. The argument of economy can be effectually answered by a re-arrangement of the tariff in Appeal. The fees should be reduced on cases of small amount, and increased on cases of five hundred pounds and upwards. The Superior Court decisions have never had the same value or authority since the Court of Review was interposed. And as to the decisions in Review, they will never have much value under the present system, under which any three of eight or nine judges can hear a case and render judgment. Since the Court of Review was established the number of Superior Court Judges in Montreal has been considerably augmented, and has created a difficulty of conflicting opinion not then thought of. To give due authority to the decisions in Review, they ought to be rendered by a majority of the whole bench in Montreal—which is practically impossible. Let the Court of Review, then, be abolished, let the Judges of the Superior Court be free to consult one another on novel points of law, let the tariff in Appeal be readjusted, and the sittings made more frequent, and a real reform will be accomplished, and a most desirable improvement effected in the administration of justice in the Province of Quebec.

LOANS BY BANKS.

The decision in *Bank of Montreal* v. *Geddes et al.*, which is to be found in this issue, involves a question which has been debated with considerable interest during the past few years, as on it hangs the fate of heavy suits for damages resulting from loans on stock. The question is as to the legality of loans by Banks, under the Act 34 Vic., c. 5, on the collateral security of shares in incorporated trading companies. On the 17th January, 1878, in the case of *Geddes et al.* v. *Banque Jacques Cartier et al.* (an action to prohibit the Banque Jacques Cartier and the City Passenger Railway Company from selling or registering the sale of any shares of the Company belonging to the plaintiffs), a similar question was raised, and Mr. Justice Papineau decided that a Bank may lawfully make advances under the Banking Act of 1871 (34 Vic., c. 5), on the security of shares in an incorporated trading company like the City Passenger Railway Company. When the defendants in *Bank of Montreal* v. *Geddes et al.*, raised the same question by demurrer, Mr. Justice Rainville was disposed to take a different view, but the learned Judge thought it better to follow Mr. Justice Papineau's decision at that stage, and thus permit the case to go to trial without the delay of an appeal. (See 2 Legal News, p. 356.) The question has now been decided in a different way by Mr. Justice Johnson, in adjudicating on the third plea, and the learned Judge had authority from Mr. Justice Rainville to state that he concurred in the opinion expressed upon the law issue.

NOTES OF CASES.

SUPERIOR COURT.

MONTREAL, April 30, 1880.

BANK OF MONTREAL v. GEDDES et al.

Banking Act of 1871—*Loans on security of stock in other companies—Under the Banking Act of* 1871, 34 *Vic.*, *c.* 5, *a Bank could not legally make loans upon the security of the stock of any joint stock company, except the stock of other Banks, and therefore an action by a Bank against the directors of a street railway company, for loss sustained by making a loan on its stock (which was alleged to have been unduly inflated by false statements on the part of said directors) cannot be maintained.*

JOHNSON, J. The trial of this case commenced before me on the 5th of November last, and was continued at intervals by adjournment until the 19th of February, when it was finally heard. I must say it was very carefully presented on both sides; and it might, perhaps, have been expected that, immediately upon the close of the argument, I should have been ready to give judgment; and so I thought I was, as far as I personally was concerned, for I had heard all

the evidence, and had had plenty of opportunity to consider it; but it had been taken at great length, and where there was conflict, it was safer to refer to the notes which the parties expressed their desire to have printed, and which appears to have taken some time, for the record was only sent up to me for judgment on the 12th of this month.

Besides this there was a very important point of law raised by demurrer to the declaration, which demurrer had been nominally dismissed, and the same point was raised by another plea. The action had been brought for damages sustained by the plaintiffs by reason of fraud and of misrepresentations said to have been made to them by the defendants while these latter had been directors of the City Passenger Railway Company;—the plaintiffs alleging that they had advanced money to a customer on the security of the stock of this company, and measuring their loss and damage by the difference between the price they were able to get for it when they sold it, and the price they were induced to give by the false representations alleged to have been made by the defendants.

The defendants had all pleaded alike, but separately: and they had all of them first of all put in a demurrer on the ground that the plaintiffs alleged themselves to have suffered the loss in consequence of their having loaned on a species of security which they had no authority to take. This demurrer, as I have said, was nominally dismissed.* I mean that the learned Judge who dismissed it (and I have of course his express authority for the statement) did so, in the main, for a reason of expediency which he explained at the time, and not because he had formed any opinion that the Bank had by law the power to lend on the security alleged. The learned Judge considered that a resort to the various Courts of Appeal, at the commencement of the suit, was undesirable, and that it would be better to reach a final decision on all the points raised before the case went to other courts. He also had doubts, at that time, whether the objection lay properly with the defendants, and he therefore hesitated to overrule a decision that had been given in *Geddes* v. *Banque Jacques Cartier*: but the learned Judge upon the mere question of law, is now of opinion that the Bank had not the power. However this may be, this court now is unquestionably called upon first of all, and before it can proceed further in the case, to decide this point; and I must do so not only because of the question of law which is still before the court on the *fond* of the case, but because the same point is expressly raised by all the defendants in their third plea.

* 2 Legal News, 356.

I have already stated the point to be in substance that the bank had no power to take the stock of the City Passenger Railway Company as collateral security for such a loan, and that no action of damages can accrue to them from a contract which they had no power to make. It is admitted that such a power, if it exists, can only be claimed under the 40th, or the 51st sections (or both) of the Banking Act of 1871 (34 V. c. 5). Those sections are in the following words:—

Sec. 40. "The Bank shall not directly or indirectly lend money, or make advances upon the security, mortgage or hypothecation of any lands or tenements, or of any ships or other vessels, nor upon the security or pledge of any share or shares of the capital stock of the Bank, or of any goods, wares or merchandize, except as authorized by this act; nor shall the Bank, either directly or indirectly, deal in the buying and selling, or bartering of goods, wares or merchandize, or engage or be engaged in any trade whatever, except as dealers in gold and silver bullion, bills of exchange, discounting of promissory notes and negotiable securities, and in such trade generally as appertains to the business of banking."

Sec. 51. "The bank shall not make loans or grant discounts on the security of its own stock; but shall have a privileged lien for any overdue debt on the shares and unpaid dividends of the debtor thereof, and may decline to allow any transfer of the shares of such debtor until such debt is paid, and if such debt is not paid when due, the Bank may sell such shares, after notice has been given to the holder thereof, of the intention of the Bank to sell the same, by mailing such notice in the Post Office to the last known address of such holder, at least thirty days prior to such sale; and upon such sale being made, the President, Vice-President, Manager or Cashier shall execute a transfer of such shares to the purchaser thereof in the usual transfer book of the Bank, which transfer shall vest in such purchaser all the rights in or to such shares which were possessed by the holder thereof, with the same obligation of warranty on his part, as if he were the vendor thereof, but without any warranty from the Bank or by the officer executing such transfer; and nothing in this Act contained shall prevent the Bank from acquiring and holding as collateral security for any advance by or debt to the Bank, or for any credit or liability incurred by the Bank to or on behalf of any person (and either at the time of such advance by, or the contracting of such debt to the Bank, or the

opening of such credit, or the incurring of such liability, by the Bank) the shares of the capital stock of any other Bank, the bonds or debentures of municipal or other corporations, or Dominion, provincial, British or foreign public securities, and such stock, bonds, debentures, or securities, may, in case of default to pay the debt for securing which they were so acquired and held, be dealt with, sold and conveyed in like manner and subject to the same restrictions as are herein provided in respect of the stock of the bank on which it has acquired a lien under this Act."

The meaning of this language in these two sections would probably be caught by an unprofessional reader at once; but when it comes to be considered in the aspect in which it was presented to the Court, that is to say, with reference to the precise legal import of these two sections taken by themselves, it is perhaps not entirely free from obscurity. This obscurity, however, probably arises more from the style than from the terms; less from what is said than from the manner of saying it. There is an inconvenient mixture of negative and affirmative matter; there are prohibitions and restrictions and powers all in the same section. First of all in the 40th section, there would appear to be a series of prohibitions the only exception to which would seem a general permission to carry on the business of banking. Then, coming to the 51st section—the latter part of it, which is all we have to look to—we find what the Bank may take as collateral security is regulated, in the terms of this section, not by a power directly given, but by specifying the things that it is not intended to prevent it from taking; so that it might look at first as if the power to make advances on certain securities was given in the shape of a saving clause, while leave to be a Bank at all is only mentioned in the form of an exception! Of course there are direct powers given in other sections, but they have not been referred to as having any bearing on this case. There is the power, for instance, in sec. 41, to hold mortgages on real and personal property, not as collateral security for advances to be made, but as additional security for pre-existing debts; and there is the 46th section, a most important one, giving the power to hold warehouse receipts and bills of lading, and to sell the property they represent, which is, as a general thing, all the power the bank has to deal in merchandize, and which also is made the subject of special exemption in the 40th section, from the prohibition there contained to deal in merchandize either directly or indirectly.

As to sec. 41, and the power to take security of every description for overdue debts, of course there is an obvious distinction between that and the power to make advances upon that and every kind of security whatever; it is the distinction between the power to contract an unlawful debt, and the power to collect a lawful one; or to speak more accurately, it is the distinction between taking an unlawful security and realizing a lawful asset. In the one case the money of the proprietors is illegally risked; in the other, after it has been lawfully lent, and lost, additional (not collateral) security is obtained to make it good; and of course there may be and there is excellent reason for not risking the shareholders' money on chimerical stocks of what I believe the western people call the wild-cat kind, while there is no reason at all for refusing to take from your debtor all you can get out of him for the ultimate satisfaction of a legitimate claim. These observations occur to me now, not because the plaintiff's counsel attached any importance to this other and distinct power as in any way affecting his case: on the contrary, he rested his case entirely and in the frankest manner upon the authority supposed to be implied in the concluding words of the 40th section, and we may feel perfectly sure, if there was anything to be made properly out of it, he would not have failed to enlist it in his service; but I make these remarks in passing merely to show that in no other part of the statute (unless it be in these two sections—the 40th and the 51st) is there any definite power given to lend money on this kind of security, and to show also that counsel are perfectly right in my opinion in putting the case upon the ground they do, for it is clearly, and I may say admittedly true, that if the 40th and 51st sections do not give the power, it is not given at all. Whatever, therefore, may be the form of this section 51, it can be no better for the plaintiff's case than if, instead of being in the form of a saving clause, it had given in a direct manner the authority it now gives in its present form; for it could not possibly be contended that even if the 51st section had enacted in a direct way that the Bank should have power to lend on the securities that are mentioned in that section, such an enactment would have included a power to lend on the kind of stock in question.

As to the form in which the power, such as it is, is given, it must be observed that the power to take securities of a very important description in connection with the commerce of the country had already been given in direct terms by the 46th section; and the form taken by the 51st section was possibly deemed necessary in order to save the rights of the Bank within well-defined limits; and those limits can no more be extended because they are defined by a saving clause, than they could be if they had been given by a direct clause. In whatever form expressed, the meaning is plain: so plain indeed, that in the breviate in the margin we find the description of the section to be:—"What stock the Bank may hold as collateral security;" nor, although the case was argued, and very ably and properly argued, as if it depended on these two sections of the statute, does it in any manner follow that these two sections, in order to receive their proper interpretation, should be read alone. It is a rule that the whole of a statute must be looked at, and its parts compared with one another; and it is another rule that the method of treating the subject must be considered to ascertain the meaning of the author, if a statute is doubtful or obscure (see Potter's Dwarris on Stat. pp. 110 and 272). Now the very first section of the statute of 1871 repealed all the previous bank charters except as to bare corporate existence, and the preservation of the property of the shareholders. The banks, therefore, were continued in existence; but all their previous active powers, after a definite time, were to be repealed and readjusted. Parliament was therefore not making law for new or projected banks: it was dealing with existing institutions. It was not conferring all the required powers for the first time: it was readjusting and in some cases extending those powers. The 51st section may have taken its form from circumstances; it did not say that such and such powers were directly conferred; it merely *explained* that in respect to the class of securities the banks might take as collateral security for advances, they were *not prevented* by the new Act from taking the descriptions of securities that it mentioned, and which do not, however, include stocks such as those lent on here.

Then, with respect to the general words at the end of section 40, the question is whether those words sufficiently conveyed the power to lend on City Passenger Railway stock; and that is really the whole question; for there can be no doubt, I think, that the terms of section 51 do not include it; and that question may be looked at with reference to the language used; and also with reference to the principles of legal construction of statutes; and with reference to other legislation bearing on the same subject. I must say that it strikes me at the outset, that if the prohibition in the 40th section from doing any business except the business of banking, is held sufficient to confer to the fullest extent express power to carry on any and every operation possible in the case of any other Bank (whatever the powers of that Bank may be), it is inconceivable why the 51st section should say this Bank is permitted, or at all events is not prevented from lending on certain securities specified, which do not include this particular kind of stock. If all conceivable transactions engaged in by any bank here or elsewhere are authorized by an enactment that I must say appears to me to mean only that the Bank shall engage in no trade except that of banking, I find it impossible to understand why this permission—either given in the present, or indeed, in any other form, should be necessary at all; yet, here it is, in the form of a saving clause not preventing the Bank from lending on a restricted list of securities; that is to say, on the stocks of other banks, the *bonds or debentures* of corporations, or public securities. Surely these are kinds of security that would usually and readily enough be taken, and which there would be no necessity to specify at all if the being restrained to the general business of banking, as distinguished from all other trades (for really it looks as if this distinction was the only object of the words), could be supposed to include not only the power to lend on the securities described in the Act, but also, and as a matter of course, the power to part with the money of the shareholders on any and every kind of stock in the world.

The 40th section, then, in my opinion, was not intended to say what the bank might do, but what it might not do. It did not say that the bank might carry on its business in this way, or in that way; but only that it was not to lend on the security of land, of ships, of its own stock, etc.; it was not to be a buyer or seller of merchandise, except in the way of warehouse

receipts, bills of lading, etc.; but, as if to give emphasis to what it might not be, it was to be a bank.

This bank, then, is a statutory corporation; it has the powers that the Act gives, and no other, except such as are ancillary and subservient. It has no charter and no powers unless they are here in this statute; and in my view of it, the general words at the end of the 40th section are not intended to give a general and indiscriminate power to carry on the business of banking in any manner they may see fit. So much, then, for the direct meaning of the words of these two sections in reference to the species of security described in the second part of section 51, and in reference to the universal and indiscriminate powers claimed or supposed to have been vested by the concluding words of section 40. We are dealing with a statutory corporation, and such bodies possess no powers —that is to say, no substantial powers that are not plainly granted. "Corporate powers cannot be created by implication, nor extended by construction. No privilege is granted unless it is expressed in plain, unequivocal words." I am quoting from Abbott's digest of the law of corporations, p. 152, par. 70.

"No powers can be exercised except such as are conferred, and in cases of reasonable doubt, it must be decided against the corporation. If a power is exercised which is not authorized, it is *ultra vires* and void." This is the language of Field in his well known treatise on the law of private corporations. It is also a rule of construction that the specification of certain powers operates as a restraint to such objects only, and is an implied prohibition of the exercise of other and distinct powers. Abbott, p. 570, p. 30.

Applying, then, the rules of interpretation laid down by the highest authorities, the conclusion would appear to be that the Bank had no right under the Banking Act to make loans on stocks other than bank stocks. This view receives a strong confirmation from a comparison of the Banking Act with the Savings Bank Act passed in the same year. (34 Vic. c. 7.) By the 18th section power is given to savings banks to lend on the collateral security of certain stocks and securities therein mentioned, viz: British or foreign public securities, or stock of some chartered bank in Canada, or in the incorporated building societies, or bonds or debentures, or stock of any incorporated institution or company. Here we find permission given to savings banks to lend on the *stock* as well as on the bonds or debentures of incorporated companies, while the other banks are only to lend on the bonds and debentures of such companies.

In 1873 two Acts were passed, prescribing the form of returns to be made by Savings Banks and by other banks (36 V., c. 43, and 36 V., c. 72). The difference in the form of these returns exactly corresponds with the difference in the classes of security on which Savings Banks and the other banks are authorized respectively to make loans. Savings Banks are required to mention "loans for which bank stocks are held as collateral security," and "loans for which *other stocks*, bonds or debentures as authorized by law are held as collateral security;" while the other banks are required to mention "loans, discounts or advances for which shares of the capital stock of any other bank are held as collateral security," and "loans for which the bonds or debentures of municipal or other corporations, or Dominion, Provincial, British or Foreign public securities are held as collateral securities." This difference between the provisions of the Acts relating to Savings Banks, and those relating to other banks is obviously not accidental, nor perhaps difficult to explain. Savings Banks, so far as their powers of dealing with the funds entrusted to them are concerned, are intended to be mere local lending institutions. They are not allowed to issue their own notes nor to discount commercial paper, nor to make advances on bills of lading or warehouse receipts. Their function is to make loans on collateral security of a very various and miscellaneous description, requiring in the management an acquaintance with the value of the securities on which the money of the Bank is lent. The business of the other banks, on the other hand, is of an entirely commercial nature: to buy and sell exchange, discount promissory notes, and make advances on bills of lading and warehouse receipts—in a word, to supply the means and facilities of carrying on the trade and commerce of the country. Their powers are declared by the 51st section not to prevent them from making advances on the bonds and debentures of incorporated companies, apparently because

loans on bonds and debentures are attended with less risk than loans on stock; and they are also allowed to advance on bank stocks, because every bank manager is supposed to know pretty well what is going on in the banking world, and to be well qualified to judge of the value of the stock of other banks, or, at all events, to have better means and opportunities of information as to the value of bank stocks than as to that of other stocks lying outside the range of his daily business and observation. If I had any doubt, therefore, as to the meaning of the Banking Act, I should hesitate to say there would not be very considerable public inconvenience and insecurity in having the opinion of Parliament on one side, and the opinion of the Court on the other.

I fear I have been very long; but the fact of the presence or of the absence of difficulty in any case is not always the measure of its importance. I should wish to stop here, but I am bound not to overlook the decision in the case of *Geddes* v. *Banque Jacques Cartier*. I should feel it was a misfortune if any Judge hesitated to consider fully the grounds of any decision in so far as those grounds can be known. There is no published report, but I am given to understand that the learned Judge based his decision on the general banking powers given by the Act, and upon the practice of Banks in England and the United States to make loans on all descriptions of stocks. As much as that may be admitted without at all admitting that Banks in Canada have the right to do the same thing. Banks in Canada are statutory corporations constituted by the Legislature. English banks on the contrary, as a matter of common knowledge, are known to be constituted on an entirely different basis. The English banking system, outside the Bank of England, which is an institution *sui generis*, governed by laws of its own and by special Acts of Parliament, is essentially a system of private banking which has grown up with the commercial development of the last two centuries, without any interference by the Legislature. It is only during the present century that legislation has taken place, and this merely for the purpose of applying the modern joint stock principle to the business of banking. It was legislation of a permissive kind which the banks might avail themselves of or not, as they pleased. Parliament did not, as far as I can discover, interfere to prescribe the manner in which the business was to be conducted, or the class of transactions in which they might engage. All that was left to be regulated by the shareholders, in their articles of association, or deeds of settlement; and the powers of one banking company might, therefore, differ, and often did materially differ, from those of another. There is no analogy, therefore, between a system built up mainly on usage, and a system created wholly by the Legislature, and governed by uniform statutory regulations which cannot be altered or departed from merely at the will of the shareholders.

As regards banks in the United States, their powers depend on State laws, or Acts of Congress, and differ widely in different States, and no argument can be drawn, therefore, from their system. But whatever doubt might have existed at the time of Judge Papineau's decision, has been completely and finally removed by the passing of the Banking Act amendment Act of last session. (42 Vic. c. 45.) By that Act, the Legislature prohibited banks from lending in future on the shares of other banks; and how is this prohibition made? By simply striking out the words "the shares of the capital stock of any other bank" from the 51st section of the Act of 1871. If, therefore, the striking out of these words from the Act of 1871 has the effect of creating a prohibition against loans on bank stocks in future, it follows that if those words had been originally omitted from the Act, the prohibition would have existed since 1871, and the same prohibition consequently does exist in regard to other stocks not mentioned in the 51st section. It appears to me I must take this Act of 1879 as an authoritative interpretation by the Legislature itself of the effect of the Act of 1871.

I have one word more to say as to the effect of a contract made by a corporation *ultra vires*. It would not seem to require any authority to show that the Bank had no recourse against anybody for the consequences of its own act committed in violation of the law. The proposition was not contested; it was only said that the general power to carry on the business of banking being given, it had been proved by Mr. Buchanan that taking this kind of stock as collateral security for a loan was an ordinary transaction with bankers; but no such practice can

have the effect of nullifying an Act of Parliament; and no Act of Parliament could be necessary if the practice is lawful without it. The contract was void in itself. "Where it appears to be the intention of the Legislature expressed or implied that the corporation shall not enter into a particular contract, every Court, whether of law or equity, is bound to treat a contract entered into contrary to the enactment as illegal, and therefore wholly void." (See case of *Riche* v. *Ashbury Railway Carriage & Iron Company*, L. R. vol. 7, p. 673, English and Irish appeals.) In using these words in that case, Lord Cairns was quoting the language used by Mr. Justice Blackburn, and he adopted it as his own. "My Lords," he added, "that sums up and exhausts the whole case," and it was concurred in by all the other Lords, Hatherly, O'Hagan and Selborne. *Ex pacto illicito non oritur actio.*

In a case cited by Field, page 303 in note—a case of *Pearce* v. *Madison R. Co.*, reported in How. 441—Justice Campbell said:—"Persons dealing with the managers of a corporation must take notice of the limitations imposed upon their authority by the Act of Incorporation." That was a case where an innocent holder of a note was prevented from recovering, because the makers being a corporation that had been consolidated without sufficient authority with another corporation, had not the power to give a note; but the Judge goes on to say words which I will venture to adopt in the present case:—"Their powers are given in consideration of the advantage the public are to receive from their discreet and intelligent employment; and the public have an interest that neither the managers nor stockholders of a corporation shall transcend their authority." There are other and numerous cases in point as to the impossibility of acquiring any right from an act which is in itself an excess of authority. Several of them are cited in the notes to Field. There is one in particular—the case of the *East Anglian R. Co.* v. *The East. Counties R. Co.* (11 C. B. 803), where Lord Langdale, speaking of the powers of a corporation to pledge the company's funds for transactions not authorized by the Act, but made to increase the traffic of a railway which was the corporate body in that case, says:—"There is no authority for anything of that kind. It has been stated that these things have been frequently done by railway companies; but unless the acts so done can be proved to be in conformity with the special Acts of Parliament under which those acts were done, they furnish no authority whatever." Substituting "banks" for "railway companies," the authority of this case completely disposes of the idea of the power arising from the practice; and, of course, as to any beneficial consequences accruing to a wrong doer from his own illegal act, there can be no serious question. I therefore feel obliged to give judgment for the defendants upon this point, and to maintain the third plea; and of course I am precluded from entering further upon the case.

Action dismissed with costs.

T. W. Ritchie, Q.C., for the plaintiffs.

Lunn & Cramp, for the defendants. *Carter, Q.C.*, *Barnard* and *Lacoste*, counsel.

SUPERIOR COURT.

[IN CHAMBERS.]

MONTREAL, April 27, 1880.

MAILLOUX v. TRUDEAU.

Procedure—Extension of delay to plead to the merits, after demand of plea under C. P. 131.

The action was *in forma pauperis*, for *injures verbales*.

The defendant pleaded a dilatory exception, alleging that plaintiff, since the institution of the action, had left Canada for the United States, and consequently he was bound to give security for costs.

The plaintiff, under C. P. 131, demanded a plea to the merits.

The defendant, before the expiration of the eight days allowed by the above article of the Code, presented a petition in Chambers, asking that he be not compelled to plead to the merits until judgment should have been rendered on the dilatory exception, as he would thereby be exposed to unnecessary costs.

D'Amour, for plaintiff, opposed the petition, on the ground that there was no provision of the Code which authorized the extension of the eight days' delay under C. P. 131, by the Court (still less by a Judge in Chambers). Moreover, the defendant's petition was unsupported by affidavit, and *in judiciis non creditur nisi juratis.*

LAFRAMBOISE, J., granted the petition, giving the defendant delay to plead until the dilatory exception should have been disposed of. Costs reserved.

D'Amour & Dumas for plaintiff.

Taillon & Nantel for defendant.

THE BAR.—For the section of the District of Montreal, the following officers have been elected for 1880-81:—

Batonnier, A. Lacoste; Syndic, W. W. Robertson; Treasurer, C. A. Geoffrion; Secretary, P. Pelletier; Council—S. Bethune, Q.C., Hon. R. Laflamme, Q.C., F. X. Archambault, M. M. Tait, J. M. Loranger, B. A. T. de Montigny, J. E. Robidoux, A. H. Lunn.

For the section of the District of Quebec, the election resulted as follows:—

Batonnier, J. G. Bosse, Q.C.; Syndic, W. Cook; Treasurer, D. J. Montambault, Q.C.; Secretary, R. J. Bradley; Council—J. Dunbar, Q.C., F. Langelier, Geo. Irvine, Q.C., R. Alleyn, Q.C., C. T. Suzor, Q.C., J. G. Blanchet, Q.C., and E. H. Pemberton.