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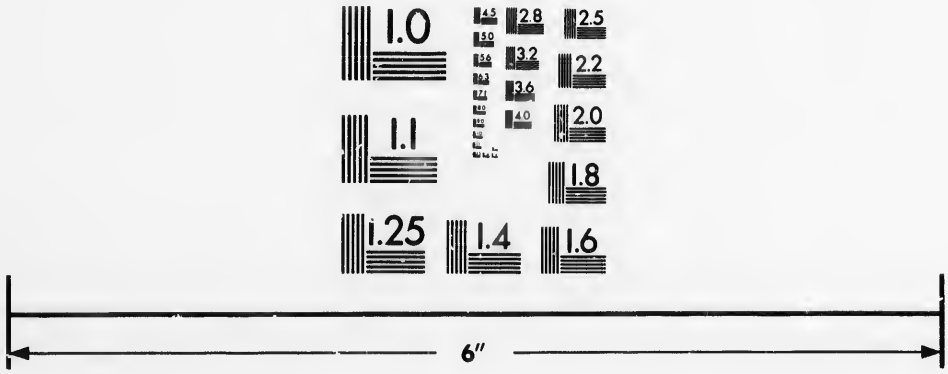

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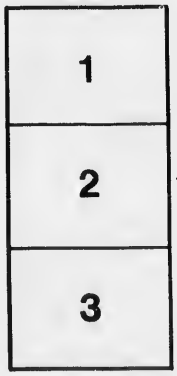

REPORT

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OF THE

TRIAL OF THE CASE

OF

THE QUEBEC BANK,

vs.

A. J. MAXHAM, et al.

IN THE SUPERIOR COURT, QUEBEC.

Before Mr. Justice Stuart and a Special Jury, June 9th and 11th, 1860.

THE QUEBEC BANK *v.* MAXHAM, et al.

SATURDAY, 9th June, 1860.

The trial of this case was commenced to-day, the Special Jury being composed of

Thomas Bickell,	William Crawford,
Duncan Macpherson,	Samuel Reid,
William Laird,	Thomas Norris,
John Gilmour,	Edward Taylor,
Robert Hamilton,	Matthew Moodie,
Charles Sharples,	Henry Tilstone.

Mr. Okill Stuart Q. C. appeared as Counsel for the plaintiffs; and Messrs. F. A. Andrews and Jones for the defendants.

This was an action against the defendants Andrew John Maxham and John Sherring Budden, co-partners trading under the name of A. J. Maxham & Co., as the makers, and against the defendant Pierre Chartré, as the endorser of a promissory note for $2000, dated 5th of August, 1859, payable two months after date to the order of the said Chartré.

The defendant Chartré severed in his defence; the defendants Maxham and Budden pleaded :—

"That the said plaintiffs cannot maintain their action against them the said defendants as to the sum of $1500, part of the sum by them demanded in and by the said declaration, because they say that, if at any time they did make and sign their promissory note in writing and did thereby promise to pay to Pierre Chartré, the other defendant, as mentioned in the said declaration, the sum of money in the said note specified, and if the said Pierre Chartré did endorse and deliver the said note to them the said plaintiffs, as is alleged in their said declaration, yet the said note was, while in the hands and possession of the said plaintiffs, paid and satisfied to them to the extent of the said sum of $1500, and as to the balance of the amount thereof the same was, before the institution of the present action, to wit: on the 10th day of October last past, at the city of Quebec, offered and tendered to them the said plaintiffs by the said defendants, and for the said sum so offered the said defendants Andrew John Maxham and John Sherring Budden with these presents have fyled in due form of law their confession of judgment in favor of the said plaintiffs, with interest and costs to the present day incurred. And the said defendants Andrew John Maxham and John Sherring Budden further represent that the said note was so made and endorsed and delivered to the said plaintiffs under the representations, considerations, promises, undertakings and agreements following, and without which the said note would never have been made or endorsed by them the said defendants, or been delivered to them the said plaintiffs namely: The said Pierre Chartré, at the said city of Quebec, heretofore, to wit: on the 13th day of September 1858 became party to a certain contract or agreement, a notarial copy whereof is herewith fyled, that reference may be thereto had if required, made and entered into by and between him and one Thomas William Goldie, Esquire, Assistant Commissary General to Her Majesty's Forces, acting in that capacity on behalf of Her Majesty, executed before Austin and another, Notaries, and bearing date at Quebec the said last mentioned day, and he the said Pierre Chartré did, for the consideration therein stated, undertake and oblige himself towards the said Thomas William Goldie and his successors in office to furnish such quantity of fresh ox beef as might be required for the use of Her Majesty's troops in garrison at Quebec, for the period of one year from the first day of October then next following And the said Pierre Chartré being unable to carry out and fulfil the said contract without obtaining certain loans of money, afterwards to wit: on the day and year last aforesaid, at Quebec aforesaid, made application to the said defendants and requested them to lend their names to certain endorsed notes whereon to obtain discounts, and thus to become his sureties for the repayment of the discounts and loans to be obtained on such endorsed notes from some one of the incorporated Banks of the said city. That the said defendants then and there, in consideration that the said Pierre Chartré would assign over to the said Bank so making such advances upon the security of their the said defendants' notes, in order that the said notes might to the extent of the monies so assigned be thus paid at maturity, by the receipt by the said Bank of the said monies, consented to become such sureties if the said loans could be thus thereafter obtained; in consequence of which said agreement entered into between the said Pierre Chartré and the said defendants, they the said defendants then and there made verbal proposals to the said plaintiffs in this cause, then being one of the incorporated Banks of the said city of Quebec, with a view to carry out the said

agreement, and were thereupon directed by the said plaintiffs, through the ministry of their agent, namely, Charles Gethinge the Cashier of the said Bank, to make such application in writing stating what amounts it was required the said Bank, on the suretyship of the said defendants, should advance the said Pierre Chartré and upon what terms and conditions the same should be advanced to him. That the said defendants thereupon, on such request of the said plaintiffs afterwards, to wit: on or about the 8th day of the said month of October 1858 reduced the said verbal proposal to an application in writing in and by a letter missive then and there given to the said plaintiffs and addressed to the President and Directors of the Quebec Bank, whereby in substance the said defendants stated that they had been requested by the said Pierre Chartré to ask if they the said plaintiffs would take up the said Pierre Chartré's account for the said Government contract for the supply of beef and advance him the necessary funds on discounting the said defendants' notes in his favor, he the said Pierre Chartré to transfer to them the said plaintiffs the monies tohe received from the saidGovernment, in such wise that they the said plaintiffs should alone receive the entire amount thereof. That the said plaintiffs accepted the said proposal so made and reduced to writing by the said defendants and gave to them verbal notice of such acceptance, and thereupon afterwards, at Quebec aforesaid, to wit: on the 16th day of the said month of October, at the request of the said defendants, the said Pierre Chartré, by deed of transfer, bearing date that day and passed before Auslin and Colleague Notaries Public, an authentic copy whereof is herewith fyled that reference may be thereto had, if required, did assign and make over to the said plaintiffs all his right to payment under the said contract with the said Thomas William Goldie and did give the said plaintiffs full power to receive the said monies to become due and payable under the same, which said assignment was, afterwards, to wit: on the 18th day of the said month of October duly notified to the said Thomas William Goldie, as appears by a notarial copy of such signification herewith fyled. That, in consideration of the said premises and to carry out and perform the covenants by them entered into with the said Pierre Chartré and with them the said plaintiffs, they the said defendants from time to time made and signed and delivered divers promissory notes, whereof the said note declared upon by the said plaintiffs in their said declaration is one. in favor of the said Pierre Chartré, and caused the said notes to be deposited with the said plaintiffs as securities for any sums of money they should advance thereon to the said Pierre Chartré beyond the amounts they should receive from the said Thomas William Goldie, or his successor in office, under the assignment hereinbefore mentioned, and thereupon they the said plaintiffs made certain advances to him the said Pierre Chartré upon the said notes so given them to be discounted, and, in payment thereof, or of so much thereof as the said sums of money by them received under and by virtue of the said assignment amounted to, at the maturity of the said notes received from the said Thomas William Goldie and his successor in office the said sums so assigned, and the difference, when the amount so received under the said assignment was less than that of the matured notes, was paid at the maturity of the said notes to the said plaintiffs by them the said defendants as such sureties of the said Pierre Chartré, according to the true meaning of their said undertakings and promises entered into as such sureties. That, at the time of the maturity of the said note by the plaintiffs declared upon in this cause they the said plaintiffs had received and been paid under the said assignment, on account of the said note and had then in the said Bank the sum of $1500 to them specially paid for the purpose of retiring the same, being part and parcel of the said monies to them paid by the said Thomas William Goldie and his successor in office under the said contract with the said Pierre Chartré and the assignment thereof: By means whereof, at and before the institution of the present action, the demand of the said plaintiffs, to the extent of the said sum of $1500 had been paid and satisfied to them the said plaintiffs, and as to the balance, namely the sum of $460.41, due upon the said note, the same was, by the said defendants, at Quebec aforesaid, afterwards to wit: on the 10th day of October last past, by the ministry of Jacques Auger and another, Public Notaries, duly tendered to the said plaintiffs, but which said balance they the said plaintiffs then and there refused to accept or receive and still continue so to do, though the said defendants have always been and now are ready and willing to pay the same to the said plaintiffs, and they now herewith fyle as aforesaid a confession of judgment therefor with interest and costs. Wherefore they pray that the action of them the said plaintiffs in this behalf be, as to the said sum of $1500, part and parcel of the said demand, dismissed, praying acte of their declaration which they hereby make of their consent that judgment be entered up against them the said Andrew John Maxham and John Sherring-Budden jointly and severally, for the said sum of $460.41, with interest and costs thereon incurred to the present day, and further praying that the plaintiffs be condemned to pay the defendants all costs to be hereafter incurred in the event of the said plaintiff's non acceptance of the said confession."

Mr. Okill Stuart rose to open the case to the jury, when

Mr. Andrews said he believed it was the defendants who should begin, as the burthen of proof lay entirely upon them.

His Honor ruled accordingly. The plaintiffs had no *onus* upon them and would be entitled to a judgment unless the defendants made out their plea of payment. The affirmative of the issue being upon the defendants they had the right to begin.

Mr. Andrews, in his opening address, said the present action was instituted by the Quebec Bank against the defendants Maxham & Co., a firm well known in the Lower Town, and Chartré, who had made default, to recover $2000, the amount of a promissory note. The defendants Maxham and Budden pleaded that, of this amount, $1500 had been paid, and the facts on which they relied in suppport of this plea were these: In the year 1858, Chartré, who had undertaken to supply beef to the garrison at Quebec, finding that he wanted funds, —£1700 monthly,—to carry out his contract, applied to Maxham & Co. to obtain an advance of monies for him by the discounting of their notes in one of the Banks of this city. Maxham & Co. agreed to this proposal, but required Chartrè to secure them by assigning over the money to become due to him by the Commissariat, to meet at maturity the notes upon which the advances would be obtained, They undertook to become liable for the difference between the amounts received from the Commissariat and those advanced by the Bank upon the security of their notes. The plaintiffs received about £6000 sterling from the Commissariat under the contract and assignment. All the notes given, signed by Maxham & Co. and deposited with the plaintiffs as security for the advances to Chartré, became due a few days after the amounts were payable by the Commissariat, The liability which Maxham & Co. assumed was to pay the Bank whatever sum might be advanced to Chartré over and above what was received from the Commissariat. They asked the Bank to advance to Chartré upon the credit of their notes, distinctly mentioning in the letter that the Bank alone was to receive the money from the Commissariat. The Bank having agreed to their request, an assignment of the monies took place, and they were regularly received by the Bank about the third, fourth, or fifth of every month, beginning in December 1858 and ending in October 1859. The defendants have stated in their articulation of facts they will prove that, by means of the monies which the Bank had in its hands, and had received from the Commissariat, the note declared upon, dated the 5th of August

last and payable on the 8th of October, was paid. The facts stated in their plea were all denied by the Bank, and the inquiry to be made by the jury was, whether it was true that an agreement was entered into such as the defendants alleged,—that an assignment of the monies due by the Commissariat took place,—that under that assignment the plaintiffs received back the sums advanced to Chartré,--and that they had in their possession, at the period of the maturity of the note sued upon, $1500 part of the monies received from the Commissariat. If the defendants proved what they alleged they would undoubtedly be entitled to a verdict, so that the sole question to be determined was whether their plea was well founded.

The defendants having submitted Interrogatories upon *faits et articles* to the plaintiffs, Charles Gethings Esq, the Cashier of the Bank, duly authorised by power of attorney, appeared and answered as follows :—

Q. 1st. Is it not true that, on or about the 8th of October 1858 the defendants (A. J. Maxham and J. S. Budden,) addressed to the President and Directors of the Quebec Bank a letter of which the following is a copy :

"Quebec, 8th October, 1858,

"Gentlemen,—We have been requested by Mr Pierre Chartré to ask if the Bank would take up his account for the Government contract in the supply of beef and advance him the funds on discounting the paper of A. J. Maxham & Co., he Chartré, transferring the proceeds of each month's delivery to the Bank, or in other words, the Bank only to receive the money. The amount required would not exceed £2000 running, but for the Fall. In order to secure the supplies for the winter, he would require £4000, that is, between this and the 1st of December next. The payments in all instances have been regularly met, and he at present has paid up every note due that was advanced for said contract for the past year, which expired on the 30th amounting to £15,000. Waiting your reply this day in the Bank, as to whether you will take the whole amount or part and grant a discount to-day of £500.

We remain,
Your obedient servants,
A. J. MAXHAM & Co.

To the President and
Directors of the Quebec Bank.

A. It is true that the defendants A. J. Maxham & Co, did.

Q. 2nd. Is it not true that, after the receipt of the said letter the same was taken into consideration by the Directors of the said Quebec Bank at one of their weekly meetings, whereat a quorum of the said Directors were present, and is not true that at the said meeting, it was resolved to accept of the proposition contained in the said letter. If nay, you are required to state what proceedings were adopted by the said Bank touching the proposition contained in the said letter, and what resolution was come to in relation thereto. Produce and fyle with your answer to this interrogatory a transcript or copy of the minutes of the proceedings of the meeting at which the said proposition was accepted by the Bank.

A. This letter was taken into consideration on the 8th of October 1858 by a quorum of the Directors of the Quebec Bank, when the following memorandum subscribed to and written at the bottom of the said letter was adopted and approved of : " The foregoing proposal acceded to and the order on the Commissariat to be deposited at once with the cashier by a notarial transfer, and the policy of insurance on the beef when stored in the winter " This is all that was done by the Board of Directors, at their meeting and is all that they did on the subject of the said letter.

Q. 3rd. Is it not true that, after the proposition so made to the said Quebec Bank, on the part of the said Pierre Chartré, Charles Gethings, Esquire, the Cashier of the said Bank, was deputed by the said Bank to act in its behalf, to accept and receive from Her Majesty's Government all and every the sum and sums of money which might be due and owing to the said Pierre Chartré, for and in respect of his contract with the said Government for the supply of beef, which is the transfer mentioned in the said letter or proposition, submitted to the said Bank on the part of the said Pierre Chartré hereinbefore referred to ?

A. There is no resolution of the Board of Directors deputing Mr. Charles Gethings to accept and receive from Her Majesty's Government all or any of the sum and sums of money which might be due and owing to the said Pierre Chartré for and in respect of his contract with the Government for the supply of beef. There was no deputed authority given by the Board to Mr. Gethings. The only thing done by the Bank was the adopting of the memorandum above mentioned. No transfer was ever submitted to the Board of Directors at any time, but the Cashier of the Bank Mr. Gethings, was the person to take the requisite proceedings to give effect to the memorandum above mentioned.

Q. 4. Is it not true that after the said proposition so made on behalf of the said Pierre Chartré and the acceptance thereof by the said Bank to wit: on the 16th day of October 1858, Charles Gethings, Esquire the said Cashier, for and on behalf of the said Quebec Bank, and the said Pierre Chartré duly signed and executed a certain deed of assignment bearing date the day and year last aforesaid, which is the same deed of assignment specially mentioned in the plea of perpetual peremptory exception of the defendants in this cause fyled, and is it not true that the said Charles Gethings was duly authorised by the said Quebec Bank to that effect, and that such assignment was made and executed more fully to carry into effect the proposition so contained in the letter hereinbefore referred to and for the purpose of giving to said Bank additional means of securing themselves against loss, as stipulated for in the said letter ?

A. The deed referred to in this interrogatory, being an authentic document, establishes that Mr. Gethings signed it. The only authority he had in relation to Chartré's contract for beef was the passing of the above mentioned memorandum by the Board of Directors. The deed of assignment was not prepared by the Notary of the Quebec Bank, nor was it submitted to the Board of Directors. As to the purpose for which the deed was executed, that appears in the deed itself, and Mr. Gethings, it is supposed by the Bank, signed with a view of giving effect to the agreement contained in the said letter, which effect it appears it never accomplished, as the monies from the Government, mentioned in the said letter, the proceeds of Chartré's contract were not received by the plaintiffs in payment of the note in question, but were, by direction of Andrew John Maxham and Chartré, placed to the credit of Chartré, both of whom that is A J Maxham & Co., and Chartré were in the habit of drawing out the monies Chartré drawing the cheques and handing them over to Maxham, who made use of these cheques to deposit them to the credit of A. J. Maxham & Co in the Quebec Bank, and took up such notes as were actually paid, by the cheques of A. J. Maxham & Co. drawn against their account with the plaintiffs.

Q. 5th Is it not true that, afterwards, in pursuance of the proposition so made on behalf of the said Pierre Chartré, and he acceptance thereof by the said Quebec Bank, the said Bank made certain advances to the said Pierre Chartré, by the discounting of certain promissory notes made and signed by the firm of A. J. Maxham & Co. in favor of the said Pierre Chartré and by him endorsed to the said Bank, and is not the promissory notes declared upon in this cause one of such notes ; and is it not true that the said Quebec Bank, by and through the said Charles Gethings received from time to time from Her Majesty's Government, in pursuance of the said assignment hereinbefore mentioned all and every the sum and sums of money that were due and owing by the said Government to the said Pierre Chartré for and in respect of the said contract mentioned in the said letter and the said assignment ? State particularly the amount of advances so made to the said Pierre Chartré and the specific notes, with their dates and amount, so discounted by the Bank for the purpose of making such advances, and also the sums of money received by the Bank from Her Majesty's Government for and on account of the said Pierre Chartré, and the dates of their reception, and also the amount of the monies so received from Her Majesty's Government, and which were in the Bank at the maturity of the promissory note declared upon in this cause ?

A. It is true that, in consequence of the proposition contained in the said letter and the acceptance thereof by the memorandum above mentioned a considerable

number of promissory notes were made and signed by the firm of A. J. Maxham & Co. in favor of the said Pierre Chartré, and by him endorsed to the said Bank including the promissory note declared upon in this case, but it is not true that the said Quebec Bank, by and through the said assignment referred to in this interrogatory, received the money from the Government or Commissariat Department referred to in the said letter, but, on the contrary, the monies that were received from the Commissariat Department under the beef contract were not received for Chartré by the Quebec Bank under that contract, but on the contrary they were received by the defendants in this cause by their directing, and more especially by Andrew John Maxham one of the defendants directing the said monies under the beef contract to be paid to Chartré, by having them deposited to the credit of the latter with the plaintiffs, to be drawn out by Chartré with the intention of receiving the same from Chartré to take up the notes of A J Maxham & Co., given as mentioned in the said letter in relation to the beef contract. The following is the statement required by this interrogatory: "Memorandum of A. J. Maxham & Co's notes in favor of P. Chartré, discounted by the Quebec Bank under letter of the 8th October 1858 from A. J. Maxham & Co. to the Quebec Bank." (This statement showed that, from the 8th of October 1858 to the 1st September 1859, 27 notes had been discounted, to the amount of $38,538-45. Of these all had been paid with the exception of 5,—4 due on the 4th October 1859 for $4000, and the note for $2000 sued upon in this cause.) The following is a statement of money received by Pierre Chartré from the Government, deposited to his credit, subject to his order, by direction of A. J Maxham & Co. (This statement shewed that $34,152,47 had been received.) There were no monies in the Quebec Bank received from Her Majesty's Government, at the maturity of the note sued on in this cause applicable to it, but there is a sum at the credit of Chartré of $1539-59, applicable, as far as it will go, to take up the notes that have never been paid, as stated in the foregoing statements At the time of the maturity of the note sued upon in this cause there were no funds in the Quebec Bank applicable to the payment of it because the balance due on the notes which have never been paid to the Bank is, as stated in the above statement, $6000, as acknowledged in part in a letter which was received from A. J. Maxham & Co. by the Bank, of which the following is a copy:

"Quebec, 5th October 1859.

To the President and Directors
of the Quebec Bank.

Gentlemen,—In consequence of Mr. Pierre Chartré having drawn from the Bank the proceeds of the money received from the Government contract, and appropriating that money to himself and not to the retirement of our notes amounting to $4500 due yesterday, we beg to state that we are unable for the present to meet them, and request you will retain such su or sums as he may have to his credit, received by you from the Commissariat on account of his endorsations on said paper remaining in your hands.

We are, Gentlemen,
Your obedient servants,
A. J. Maxham & Co.

It is true that A. J. Maxham & Co. have obtained possession of the notes due on the 1st—4th October 1859, amounting to $4000, by overdrawing their account with the plaintiffs, without the knowledge or consent of the Bank, and by mistake, but neither these notes or the note sued upon have ever been paid to the Bank, the plaintiffs in this cause.

The defendants did not declare whether they availed themselves of the above answers.

CHARLES GETHINGS, Esq., was the first witness called on behalf of the defendants. Examined by Mr. Andrews, he said: I am the Cashier of the Quebec Bank, and I have been so for many years. I am not aware that the defendants Maxham & Co., in the month of October, 1858, applied verbally to the Bank to make advances to Pierre Chartré, one of the defendants, upon the security of their paper, but an application in writing to that effect was made by a letter which has been produced in this cause by the plaintiffs, and the application was submitted to the Board of Directors, and was assented to by the Board. (The letter of the 8th of October 1858, was read to the jury) Subsequently to this I became a party to the deed of assignment now shewn to me. [The assignment was here read. After stating the contract with the Commissariat and Chartré's inability to carry out the same without advances from the Bank of such sums "as he the said Charles Gethings shall deem necessary and be warranted in making," it continues in these words: "And, whereas, in order to protect, idemnify and bear harmless the said Charles Gethings, from and against any loss whatever that may happen by means of such advances, he the said Pierre Chartré did, as by these presents he doth, transfer, assign and set over unto the said Charles Gethings accepting hereof for and on behalf of the said Quebec Bank, all the right, title, claim, interest property and demand of him the said Pierre Chartré in and to the aforesaid in part above recited contract or agreement. To have and to hold the aforesaid rights, claims and demand of him the said Pierre Chartré in and to the aforesaid contract hereby assigned and intended so to be unto the said Charles Gethings for and during the aforesaid period of one year. The present assignment is thus made and entered into by and on the part of the said Pierre Chartré for and in consideration of the sum of five shillings lawful current money of Canada, which the said Pierre Chartré hereby acknowledges to have received from the said Charles Gethings at the time of the execution hereof, and also upon the express understanding and condition that the said Charles Gethings shall or will not be in any way held or bound to carry out and fulfil the aforesaid in part above recited contract, nor any of the conditions thereof, but that the said Pierre Chartré shall and will carry out and fulfil the same in his own name, in manner as if these presents had never been made and entered into. And for the full effect of the present assignment the said Pierre Chartré doth hereby put, substitute and subrogate the said Charles Gethings in all his right, title, claim, interest and demand in and to the aforesaid contract in part above recited. And the said Pierre Chartré doth further by these presents make, name, constitute and appoint the said Charles Gethings to be his true and lawful attorney irrevocable with full power and authority for and in the name of him the said Pierre Chartré to draw, accept take, recover and receive all and every the sum and sums of money now due and which may hereafter become due owing and payable to him the said Pierre Chartré by the said Thomas William Goldie or his successor in office under the aforesaid in part above recited contract, and upon receipt of all sums of money under these presents to give good and valid receipts releases and discharges, hereby ratifying and confirming and promising to ratify and confirm all and whatever the said said Charles Gethings shall lawfully do or cause to be done in the premises by virtue hereof."] After the passing of this document I gave a receipt to the Commissariat for the monies which became due on Chartré's contract, and

and placed them to the credit of Chartré by Mr. Maxham's direction. The amount received by the Bank under the assignment is $34,-152, 47. Of this sum, $5,730 48 was received on the 3rd of October last. Four of the defendants notes matured on the 4th October, and the gross amount of such notes was $4000. I have stated that these monies were placed to the credit of Chartré by Mr Maxham's direction. Mr Maxham came into the Cashier's room and I asked him if he wished the monies received from the Commissariat to be placed to the credit of Chartré, as usual; I asked the question because I had seen Chartré come into the Bank in a state of intoxication. Mr. Maxham answered yes, that he had confidence in Mr. Chartré or words to that effect. He did not say to me it was perfectly immaterial to him whether the account was in the name of Chartré or A. J. Maxham & Co, provided the Bank kept the money. We had previously to that received monies from the Commissariat with the consent of A. J. Maxham & Co., which were put to the credit of Chartré. At the time I put the question to Mr. Maxham whether the monies received from the Commissariat were to be placed to Chartré's credit as usual, several sums of money had been received from the Commissariat and placed to his credit

Cross Examined by Mr Stuart.—From the very commencement of the contract all the monies obtained from the Commissariat were deposited to the credit of Chartré in his bank account with the Bank, as the Bank books shew,—which came to be done by the direction of A. J. Maxham & Co., or one of the firm. I mean to say that the whole account from the commencement was kept in the name of Chartré by direction of A. J. Maxham & Co. [The witness being desirous of referring to the Bank ledger, now in Court, to verify his statement, finds upon an examination of it that the account was so kept,] These monies were under the control of Pierre Chartré in the Bank, and they were drawn out by Chartré's own checks. [Defendants object to this evidence.]The general way of appropriating the funds obtained from the Commissariat contract was by Chartré drawing his check upon the Bank against that account, and handing those checks to A. J. Maxham & Co. who deposited the amount there of to their own account in the bank, and gave their own checks to take up their promissory notes to Chartré. [The defendants admit that the checks being plaintiffs' exhibits A 2 to A 8 inclusive, are checks filled up in the body of them in the handwriting of one of the defendants, Maxham or Budden, and signed by Chartré. They also admit that the bordereaux attached to each of the said checks are signed or written by A. J. Maxham & Co, ; as also the bordereaux attached to plaintiffs exhibits A 1, A 4, A 7.—The defendants object to any proof of the manner in which the monies in question went out of the Bank] All the notes given by A. J. Maxham & Co., which have been referred to by me, that is the notes given by [illegible]m and endorsed by Chartré, under the contract, have not been taken up and paid by the monies from the Commissariat. Some of these notes were retired by a check which was not good, of which A. J. Maxham & Co., must have been aware as they had not deposited Chartré check. The amount of this check was $4,200 which included $200 for the payment of a not not connected with this case. The note for $2000 sued upon in this case has never been paid or taken up by any person. The $4,200 above mentioned, the amount of the bad check to which I have referred, is the amount of notes due on the 4th October, and given under the said contract, except $200. That amount is now due for advances upon notes under the contract, and with the amount of the note sued upon, makes a sum of $6000,—balance of notes given and cashed by the Bank under the contract,—which has not been paid to the Bank. This check was not taken by my authority or with the knowledge of the Bank. [Objected to by defendants. The letter dated 5th October 1859, being shown to the witness, defendants object to the production of the same and the Court holds that it is not admissible at this stage of the proceedings.] The only conversation that I recollect between Mr Maxham and myself is the one to which I have already referred. I should say that the contract had far advanced at that time; there were some receipts after, but I cannot tax my recollection with the period.

Re-Examined by Mr. Jones.—Chartré signed no checks to take up Maxham & Co's., notes that I am aware of; the notes were taken up by Maxham & Co's checks. I am not aware that there were any other notes drawn by the firm of A. J. Maxham & Co, in favor of Pierre Chartré, and discounted by the Bank, than those mentioned in the statement above referred to. There appear to have been six notes to mature after the 3rd of October last; one for $1200, dated 1st July, due 4th October another for $1200 of the same date, also due 4th October; a third, for $2000, dated 5th Aug due 5th—8th Oct; a fourth, for $1000, dated 12th August, due 5th November, which has been paid; a fifth for $1000, dated 1st September, due 4th October; and a sixth for $600 dated 1st September and due 1st and 4th October—that is six notes, of which one was paid, leaving five unpaid, as appears by the statements I hold in my hand.

Q.—Is it not true that the four promissory notes of which you have spoken, which were drawn by the firm of A. J. Maxham & Co., in favor of Pierre Chartré and discounted by the Bank, and which matured respectively on the 4th of October 1859, were taken up and retired by the firm of A. J Maxham & Co., by means of their check upon the said Quebec Bank for the sum of $4,200 of which you have spoken and that the said notes were thereupon delivered up to A. J. Maxham & Co., and that the said Quebec Bank now holds the said check

A.—The notes were not paid because the check given for them was of no value at the time, nor has it since been made good, though the notes were given up by one of the clerks in the Bank for the said valueless check.—By the statement which I hold in my hand it appears that, apart from the said four notes the only note remaining, unpaid is that of the 5th of August, for $2000, due on the 8th of October last, which is the note sued upon in this cause

Q.—It is not true that on the 8th day of Octo

ber 1859 there was still in the hands of the Bank, of the monies received from the Commissariat, the sum of $1530,59, which sum is still in the hands of the Bank ?

A.—There was such a sum in the Bank to the credit of Chartré, but I cannot say whether this was the money received from the Commissariat, as it is the balance of it and other monies belonging to Chartré. Having referred to the Bank books I find that the above balance had been received from the Commissariat with the exception of $9.

Q.—(By one of the Jury.) What amount in the gross was discounted by the Bank for Chartré upon Maxham & Co's notes ?

A.—It appears by a statement handed to me by the Bookkeeper of the Bank that the amount of discount for Chartré on A. J. Maxham & Co's paper was $38,513,45 [The plaintiffs admit that an action for money had and received has been brought by the Bank against A. J, Maxham & Co., and that the sum of $4200, the amount of the valueless check above spoken of, forms part thereof.]

Re-cross examined by Mr. Stuart.—The promissory notes were given up by Mr. Sanderson upon Mr. Peniston, a clerk in the Bank, accepting what is called a valueless check.

Q.—Had any clerk in the Bank, including Mr. Peniston, any authority from the Bank to deliver up any of its promissory notes, including those above referred to, without payment of the amount of the same ?

Objected to by defendants and overruled.

The Court then adjourned until Monday morning.

Monday, 11th June.

The Court met at 10 o'clock, and the examination of the defendants' witnesses was proceeded with.

George Hart, Ledger-keeper in the Bank of British North America, said : During the last year a number of checks, which I produce, were drawn upon the Bank of British North America, by the Commissariat, in favor of Charles Gethings. These checks were all payable to Mr. Gethings or bearer, and were paid, that is, the amount was credited to the Quebec Bank in their account with the Bank of British North America.

William M. Rogers, Deputy Assistant Commissary General sworn :—I am at present in charge of Her Majesty's Commissariat at Quebec, and have been so since April last. Mr. Plant was my predecessor in charge of that department. I know that there was a contract between the Commissariat Department and Pierre Chartré for the supply of beef to Her Majesty's Forces for twelve months which expired in or about the month of October 1859. The monies under that contract were received by Mr. Gethings who gave receipts for the same. The accounts for the supply of beef under this contract were made out in Mr Gethings name.

This was the defendants' case.

Mr. Okill Stuart cited to the Court Story on Promissory Notes p. 107, Pothier Ob.189, 1 Troplong Priv. et Hy. p 291, to shew that the taking of a promissory note or other security for a preexisting debt is treated *prima facie* as a conditional payment, that is as payment only if it is duly paid at maturity ; and, unless so intended by the parties, does not amount to a payment or an extinguishment of the original debt by way of novation.

Mr. Stuart then proceeded to address the jury on behalf of the plaintiffs. The facts of the case were mostly all under their consideration, and he should adduce but very few more. The question was whether there had been a payment of the note sued upon, to the extent of $1500 It was necessary the jury should keep constantly in view the contract between the parties, for that was the basis of the subsequent transactions. The letter of the 8th of October 1858 established what that agreement was ; it was so far carried out that notes were given by Maxham & Co , and the question now submitted was, whether one of these notes had or had not been partially paid The questions upon which the jury would have to find yea or nay were the following (The learned Counsel here read the questions submitted to the jury.) The mode and manner of giving effect to the contract should also be kept under their consideration. A deed of assignment was passed and signed by Mr. Gethings, and the Bank did not take any other step than the adoption of the memorandum written at the bottom of A. J. Maxham & Co's letter The monies were to be under the control of the Bank only, instead of which, there was a deviation and departure from this agreement, the monies were actually deposited to A J Maxham & Co.'s credit, they and Chartré reserving the control over them. The instant that the money was placed to the credit of Chartré he had as much power over it as if it were in his own chest, and this was allowed at the particular request of A. J Maxham & Co. This course was adopted by them to retire their own notes. If the jury believed the testimony they must be convinced that the money received from the Commissariat did not go to retire the notes, as agreed upon, but went to Maxham & Co.'s credit, and was chequed out by them to answer their own purposes The contract between Maxham & Co. and the Bank was a contract of pledge ; the monies received from the Commissariat were to be given in pledge for the payment of the notes, which was not done. Notes signed by Maxham & Co., and endorsed by Chartré, were given, Mr. Gethings went to the Commissariat, got the money under the beef contract, and put it to the credit of Chartré in the Bank, at the instance of A. J. Maxham & Co . The money, however, was not afterwards applied as contemplated, so that there could be no implied payment out of it. The money placed to Chartré's credit in the Bank was taken out, not merely by Chartré himself, but by A. J. Maxham & Co on his cheques, which they were in the habit of placing to their own credit in the Bank. This was a mode of payment different from that prescribed ; it was, no doubt, adopted to accommodate A. J. Maxham & Co., and the question now came to be whether, the monies not having been applied in the manner prescribed by the contract, they could be considered applicable to the payment of the notes

given under that contract. He (Mr. Stuart,) held in his hand eight cheques drawn by Mr. Chartré, all of which were deposited in the Bank by Maxham & Co. themselves, with the bordereaux in their or their clerk's handwriting, to the credit of A. J. Maxham & Co. It was they who took out the monies, from their own deposit account, which went to retire their notes in Chartre's favor. The evidence of Mr. Gethings shewed that the monies were not applied as the contract required. He proved that, in October last, there was in the Bank, when this note became due, $1530,59 to the credit of Chartré, and that there was then due on Maxham & Co's notes, endorsed by him, $3000. If Mr. Gethings' testimony was to be believed, and there could be no doubt of the truth of it, as figures and the Bank books established precisely the same facts. there was a balance of between $4 and $5000 due the Bank. on the 5th October, 1859, and it was therefore perfectly plain that the note in question could not be considered partly paid by the $1530,59; and, instead of there being that amount in the Bank applicable to its payment, there was, as he had already said, a sum of about $4469 63 due the Bank. The manner in which the difficulty arose was simply the consequence of Maxham & Co adopting a mode of business of their own; if there was any difficulty or misplaced confidence it was their own fault. The contract with the Bank was entered into for the benefit of Maxham & Co; it was not to be supposed that they were doing what they did for Chartré gratuitously; they of course expected to get a commission on the amount of the advances; and the question came to be whether they had not themselves allowed the monies which should have gone in payment of the notes to be drawn out by Chartré. The money was to be pledged to the payment of the notes, yet they allowed Chartré to draw it out, did so themselves, and availed themselves of it when at their credit, and now attempted to throw the loss upon the Bank. If persons in the position of the defendants laid down a certain rule and mode of proceeding, as to the monies received from the Commissariat, they must be bound by it He called the attention of the jury to the fact, that A. J. Maxham & Co. persisted in the course of proceeding which resulted in this suit. When Mr. Gethings, beginning to suspect that Chartré was not worthy of confidence, from the circumstances of his seeing him going into the Bank intoxicated, called Mr. Maxham into the Cashier's room and asked him if he wished the monies received from the Commissariat to be placed to Chartré's credit as usual, what did Mr. Maxham say? He said yes; he allowed matters to go on as before; he expressed a perfect approval of the whole course of the Bank, and he now wished to throw on the plaintiffs a loss which he had suffered by not heeding the Cashier's warning. Chartré, the evidence would shew, was in the habit of taking his own cheques to the Bank, getting them accepted and handing them to A. J. Maxham & Co., who again took them to the Bank and deposited them to their own account. Some of these cheques signed by Chartré were filled up by A. J. Maxham & Co. If one of the cheques was misapplied, who ought to suffer; was it not A. J. Maxham & Co., whose confidence in Chartré was evidently misplaced? On the 4th of October last, four notes fell due. That day, Chartré, as usual, went to the Bank and presented his cheque for $4000, as was supposed, to take up his note, and as Maxham & Co. had every reason to believe he would do. Instead of doing this, however, after getting his cheque accepted, he put it in his pocket, went to the Bank of British North America, and drew the money. The instant he had received the cheque accepted, it was worth so much money—there was a sum of $4000 drawn from the Quebec Bank in the manner sanctioned by Maxham & Co., which should have gone towards the payment of the notes, but which did not. The whole course of dealing established that the notes were not paid with the monies received from the Commissariat and deposited to Chartré's credit; A. J. Maxham & Co always took up their notes by means of their own cheques drawn upon their own account. Immediately after what had occurred in relation to Chartré, the clerk in the Bank was applied to by Maxham & Co. for the notes due on the 4th October, amounting to $4000, and he handed them over to Mr. Budden, one of the defendants, upon receiving Maxham & Co's cheque for that sum, the clerk supposing that Chartré's cheque for the $4000 had been, or was about being, deposited by A. J. Maxham & Co. The acceptance of this cheque was an error, but that did not alter the case; the cheque being valueless the notes remain unpaid. The clerk who made the mistake had no authority to accept the cheque, Maxham & Co.'s account being overdrawn, and the notes should not have been given up. The clerk, on discovering his error, went to Maxham & Co. and asked them to deposit the amount of the notes, and the letter of the 5th October was soon afterwards written. This letter was an acknowledgment that the notes had not been retired by the money from the Commissariat. With such an admission from Maxham & Co, that the notes had not been retired with the money received under the contract, though there was an express promise to pay them with that money, the jury could not, after deliberation, but declare, conscientiously, that the money had not been applied as agreed upon, but otherwise by the consent of all parties. A sum of $6,000 received from the Commissariat was the balance now due the Bank; Maxham & Co.'s cheque upon an overdrawn account was no payment, and the note sued upon could not be considered as partially paid to the amount of $1500, as pleaded by the defendants.

Richard Francis Peniston, assistant book-keeper in the Quebec Bank, was called by the plaintiffs as a witness in rebuttal. Examined by Mr. Stuart he said: I have been assistant book-keeper in the Quebec Bank for the last four years; I have held that office from before the 5th October 1858 down to the present time. I know Mr. Pierre Chartré and Messrs. A. J. Maxham & Co. the defendants in this case. They had each an account in the Quebec Bank, an ordinary bank account.

Q—What was done with the monies received, under the beef contract, and to whose credit were they carried?

[Objected to by defendants.—Objection overruled.]

A—These monies, after they were received from the Commissariat, went to the credit of Pierre Chartré in his deposit account with the Bank. During the year from the date of the contract, A. J Maxham & Co.'s notes endorsed by Chartré were discounted by the Bank for the benefit of Chartré under the beef contract. I now produce a list of A. J. Maxham & Co.'s notes in favor of Chartré which were given under the said contract, the whole amount being $38,513 45. [The defendants admit that the notes filed and of record in a cause No. 1168, now pending in this Court, wherein the Quebec Bank are plaintiffs and the defendants are defendants, are four of the notes given under the beef contract.] On the 4th October these notes, amounting in all to $4000, became due, and on the 8th of October the note for $2000 sued on was payable, so that, on the 8th of October 1859 there were $6000 of these beef contract notes remaining unpaid.

Q.—Will you state what was the course adopted by A. J. Maxham & Co., two of the defendants, when their notes, given under the beef contract, to the order of Chartré, were taken up by monies from the Commissariat? [Objected to by defendants, the facts inquired of not being at issue in this cause.—Objection overruled.]

A.—They, that is A. J. Maxham & Co. generally deposited Chartré's check, and took up their own notes with their own checks. They had these checks of Chartré in their possession, and brought them to the Bank for the purpose of deposit as I have already stated. The paper writings, being the checks and bordereaux marked exhibits A 1 to A 8 inclusive in this cause filed, passed through my hands as part of the monies received under the contract. The checks which A. J. Maxham & Co. brought to the bank were sometimes checks that had been previously accepted by me and taken back sometimes by Chartré and sometimes by Maxham & Co. Sometimes Chartré's checks were brought in which had not been previously accepted by me Chartré would sometimes get his check accepted, and take it to Maxham & Co., who would bring it to the Bank, deposit it with their own bordereau, and with their own check take up the note under the beef contract

Q.—Will you state what occurred in relation to the four notes which became due on the 4th of October, 1859, above mentioned?

[Objected to by defendants.—Taken de bene esse.]

A.—I accepted A. J. Maxham & Co's check for $4,200, in good faith that they were depositing Pierre Chartre's check for the like amount against their own. On finding that they did not make the deposit, I sent over to Mr. Maxham's office requesting them to make their check good, upon which Mr. Budden, one of the defendants, came over to the Bank, and said he would go after Mr. Chartré and get the check from him Mr. Budden did not return or make the deposit that day. I sent for him again next morning, and he gave me the same reply. The check remains unpaid to this day.

Q.—Upon the notes, including the four due on the 4th of October, and that for $2,000 sued on in this cause, how much remains unpaid?

A.—Six thousand dollars.

Q.—In whose handwriting is the letter dated 5th October, 1859, signed "A. J. Maxham & Co?"

[Defendants object to production of this letter.—Allowed de bene esse]

A.—It is in the handwriting of A. J. Maxham, one of the defendants. At that time there remained to Chartre's credit $1,539 59.

[The plaintiffs here produce the original account, kept in the Quebec Bank ledger, of the monies received from the Commissariat, that is Chartre's deposit account with the Bank for those monies.]

Examination Continued.—The book endorsed A 13, contains a true copy of that account. [Objected to by defendants—Taken de bene esse.] The crosses and figures in red ink indicate the amounts of the notes discounted under the beef contract. Chartre's check for $4,200, mentioned in the Bank account, was paid by the Quebec Bank in account with the Bank of British North America.

Cross-Examined by Mr. Jones.—I am not interested in any way in the event of this suit. The Quebec Bank called upon myself and my sureties for the payment of the amount of Maxham & Co's check, which I accepted on the 4th of October, in payment of and to take up the four notes which I have mentioned. I cannot state that all the notes mentioned in the list or statement which I have produced were discounted by the Bank on account of the contract in question; I cannot distinguish the beef contract notes from the other notes On the 4th of October, shortly after the bank opened, Chartré presented his check for $4200, which I accepted. The monies had then been drawn from the Commissariat. Towards the close of banking hours that day A. J. Maxham & Co. presented their check for $4200, in payment of their four notes in favor of Pierre Chartré, which I accepted, and the notes were delivered up to them. The $4200 check included an amount of $200 not in any way connected with this transaction. I did not inform Messrs. A. J. Maxham and Co. at the time they presented their check that I had previously accepted Chartrés check. I was not in the habit of doing so. I had not communicated with the Directors before I sent for Mr. Budden in relation to A. J. Maxham and Co. having overdrawn their account.

Re-examined by Mr. Stuart—I have been released by the Bank from all responsibility for permitting A. J. Maxham & Co. to over draw their account, by deed passed before Campbell and colleague, Notaries, on the 6th of May last.

Mr. Jones addressed the jury in reply.—A large amount of evidence had been adduced before the jury, which, in his humble opinion, was not in any way connected with the case submitted for their consideration. It was

not his intention to go over this evidence; he should confine himself to such facts as he conceived had a direct bearing upon the issue to be tried. It appeared that on the 8th of October, 1858, Pierre Chartré, one of the defendants, having entered into a contract with Her Majesty's Commissariat Department, at Quebec, for the supply of fresh beef to the Forces, and being unable to carry out the contract, without some pecuniary assistance, applied to the firm of A. J. Maxham & Co., the other defendants, to make application to the Quebec Bank on his behalf, in order to obtain the necessary advance of money for this purpose. Accordingly, the defendants, A. J. Maxham & Co., did apply to the Quebec Bank on behalf of Mr. Chartré, to make him this advance, by the discounting of their notes in his favor, and offered, on behalf of Mr. Chartré to assign the monies coming to him from the Commissariat Department in payment and satisfaction of the advance, or so much thereof as the said monies would suffice to pay and satisfy. This proposition was acceded to by the Bank, and Messrs. Maxham & Co. were requested to reduce the same to writing, which was done by the letter of the same date, which had been read to the jury, and which formed the basis of the whole transaction. The Bank were aware at the time that they could not, without violating their charter, make a direct advance in money to Chartré upon this beef contract, because their charter expressly forbids their dealing in anything except bills of exchange, discounting of notes of hand, receiving the discount at the time of negociating, gold or silver bullion, or in the sale of stock pledged for money lent and not redeemed, and therefore, in order to carry out the agreement with Chartré, they required that the notes alluded to should be granted. The making and granting of these notes can only be looked upon, therefore, as ancillary to the carrying out the direct advance of money to Chartré by the Bank. By the letter, Maxham & Co. stipulated that the Bank only should receive the money, meaning the monies to become due to Chartré by the Commissariat; and it was for the gentlemen of the jury to put such a construction upon that and the other portions of the letter, as would best carry out the intentions of the parties. By its terms Maxham & Co. could only be considered as becoming liable as sureties of Chartré towards the Bank, in the event of the monies to be received by them from the Commissariat, not proving sufficient to cover the advances made to Chartré. The Bank having accepted the terms of this letter, in order to carry out the principal condition imposed upon them by Maxham & Co, namely, that of receiving the monies themselves from the Commissariat, caused to be prepared and executed the deed of assignment which had been referred to, by which Chartré not only appears to have transferred all the monies to become due to him, but also the contract, so that the Bank virtually came to be contractors with Her Majesty's Military Government for the supply of fresh beef for the use of the Forces; and the monthly accounts furnished to the department would seem to justify this position. The making of this assignment was certainly to ensure the due payment of the notes; and the Bank fully intending that they should lose nothing by the transaction, required not only that the order on the Commissariat, by means of a notarial transfer, should be deposited with the Cashier, as stated by Mr. Gethings but also that the beef in store during the winter months should be insured by Chartré, and the policy assigned to them, constituting at the same time Mr. Gethings the sole judge of the amount of monies to be advanced. Advances were then made from time to time to Chartré by the Bank, and his monies were received by Mr. Gethings, and placed to his account by the voluntary act of the Bank, as the question put to Mr. Maxham by the Cashier, whether he should continue to place the monies to Chartré's account as usual, which was the first occasion he had addressed Mr. Maxham, sufficiently shews. Mr. Gethings stated his reason for asking this question: it was, as he said, that Chartré had come into the Bank on several occasions in a state of intoxication,—a circumstance which surely should have placed the Bank on its guard in relation to the application of these monies. Notes of a similar description continued to be discounted, and the monies to be received by the Bank from the Commissariat for nearly a year, coming down to the 3rd of October, 1859, when the last payment was made, amounting to $5730. On the 4th October four notes of Maxham & Co., and held by the Bank, amounting in the aggregate to $4000, matured and were retired by Maxham & Co.'s cheque, Chartré having, on the same day, abstracted from the Bank, of the monies so received on the previous day, a sum of $4200. The jury had heard a great deal about those four notes and the money so abstracted by Chartré, but this had nothing whatever to do with the present case. There then remained of these Commissariat monies $1530, and that amount being in the Bank on the 8th October last, when the note for $2000 declared upon in this cause became due, this sum of $1530 was applicable to the payment of this last mentioned note, which came to be satisfied to that extent; and Maxham & Co., having tendered the balance, which was refused, the plaintiffs certainly could not claim against him for any larger sum. They have endeavored, however, to account for the $1530. Mr. Gethings has told you in his evidence that they had imputed this sum to the part payment of the amount of the four notes which matured on the 4th October, while, in the same breath, he told you that Messrs. Maxham & Co. had retired these notes and had them in their possession, and that the Bank had instituted another suit against Maxham & Co., which was still pending in this Court, for the recovery of the amount of the very cheque which had been given by them and accepted by the Bank in payment of these notes. The only question in this case is this: Was there any part of the monies received by the Bank from the Commissariat in the Bank at the maturity of the note sued upon in this cause, to meet that note or any part thereof? The jury had been told there were $1530, but

At the same time it is pretended that this sum could not be so applied, because it had been placed to Chartré's account, and was subject to his control. Was it consistent with this pretension that the Bank should require an assignment of the monies due to Chartré by the Commissariat Department, by means of a notarial instrument, as well as a transfer of the policy of insurance, and that they should take every other possible means of protecting themselves against loss. Why were all these precautionary measures adopted? The Bank had taken the trouble to enter into this transaction by means of a special agreement, and had even deputed their own officers to receive the monies coming from the Commissariat, which were to be applied in repaying the Bank the monies advanced to Chartré, and yet having received these monies, they pretended that they never looked upon these proceedings in any other light than an ordinary banking transaction, considering Chartré merely as a depositor of the Bank. The questions which had been submitted to the jury were few, and could be readily answered, and he (the learned Counsel,) did not think they would find any difficulty as to the first three—the fourth involved the main point at issue, and to this, as he viewed the case, an easy response could likewise be given. The only note of all those discounted, under the agreement in question, that remained unpaid to the Bank, was the one sued upon, and the $1530, part of the monies received by Mr. Gethings, from the Commissariat, on the 3rd October, could be applied to no other debt of Chartré's than in part payment of this note; for the appropriation of these monies in this particular way had been specially agreed upon between the parties; and the application of these monies as attempted by the Bank, towards the payment of the notes, which had already been retired, would, he felt sure, find little consideration at the hands of the jury. The Bank had instituted a suit, as before stated for the recovery of the amount of the cheque which had been accepted by them in payment of these four promissory notes. That suit was still pending and ought to be decided upon its own merits, and any facts relating to it could not influence the jury in the decision of this case. Even if the jury could enter into the consideration of the facts in relation to the non payment of these four promissory notes, it would then have to decide between two innocent parties—admitting, for argument sake, that the conduct of the Bank could be viewed in this light, and to say, who ought to suffer the loss by Chartré's act, he believed the decision would be in favor of the defendants. A letter written by Maxham & Co., on the 5th October last, had been read to the jury, and he should not have referred to it, had that letter not been produced for the purpose of creating an erroneous impression upon their minds. This letter bears upon its face the impress of an untruth, referring, as it does, to the four notes therein alluded to, as if the same were at that time in the possession of the plaintiffs which, as the Bank well knew, was not in accordance with the fact. It had no bearing upon the present case, and could not therefore be made use of by the Bank for the purposes contemplated by them.

Mr. Justice Stuart summed up the case.—The action being brought on a promissory note, which was admitted, the attention of the jury would be confined to the defence. (His Honor read the defendants' plea.) The *gist* of the defence they, no doubt, collected from the reading of the plea consisted in the allegation, "that at the time of the maturity of the said note by the plaintiffs declared upon in this cause, they the said plaintiffs had received and been paid under the said assignment, on account of the said note, and had then in the said Bank the sum of $1500 to them specially paid for the purpose of retiring the same, being part and parcel of the said monies to them paid by the said Thomas William Goldie and his successor in office under the said contract with the said Pierre Chartré and the assignment thereof." The first rule for the interpretation of contracts is this: "To enable us (says Addison, page 847,) to arrive at the real intent of the parties, and to make a correct application of the words and language of the contract to the subject matter thereof, and the objects professed to be described, all the surrounding facts and circumstances may be taken into consideration. The law does not deny to the reader the same light and information that the writer enjoyed; he may acquaint himself with the reasons and circumstances that are the subjects of the allusions and statements in the written agreement, and is entitled to place himself in the same situation as the party who made the contract, to view the circumstances as he viewed them, and so to judge of the meaning of the words and of the correct application of the language to the things described." Applying this rule to the contract in question, it is fitting to look at the parties and their intention. Chartré was a contractor and required advances from one of the Banks to enable him to fulfil his contract. Of necessity he must get somebody to become a party upon the paper that he would offer to the Bank for discount; he appeared to have applied to Maxham & Co. and they wrote to the Bank on his behalf. The application was that of Chartré, and the contract which followed was one between the Bank and him. The offer by Chartré to allow the Bank to draw the monies from the Commissariat was held out, no doubt, as an inducement to the Bank to give him accommodation. The contract, then, was one between the Bank and Chartré, to discount Maxham & Co's notes in favor of Chartré, the obligation of Maxham & Co., towards the Bank being to pay these notes at maturity The next point to be considered is how the contract was interpreted by all the parties to the present record. No rule of law or common sense is better known than that the interpretation put upon a contract by the parties themselves is the best it can receive. When the monies were received by the Bank from the Commissariat they were put to the credit of Chartré, and it could not be other-

wise; they were also checked out by Chartré. According to the authority already cited, "in ordinary cases of deposits of money with bankers, the transaction amounts to a mutuum or loan for use and consumption, it being understood that the banker is to have the use of the money in return for his consent to take charge of it." The instant this money was received by the Bank, the Bank owed Chartré a similar sum, and were accountable to him for every farthing they received. It is a circumstance of no importance that, for the most part, Chartré appears to have given his checks to Maxham & Co, who paid their own notes by means of their own checks. It is sufficient for this case that, by the consent of all parties, the monies received from the Commissariat were treated as the monies of Chartré, held by the Bank, subject to his order. With reference to the instrument styled an assignment to the Bank, it purports to be an assignment, but is really none whatever. It is an instrument contradictory in itself. It commences by saying that Chartré assigns to the Bank his contract for the supply of beef. If the rights of Chartré on the 8th of October, 1858, were that he should first supply the beef before he could get any money this was an executory contract. Yet the defendants pretend it was an assignment of that contract. If it were looked at in that light, the Quebec Bank ought to have supplied the beef and received the money as their own. But a little further on it says nothing is to be understood as compelling the Bank to furnish the beef, and that Chartré himself is to supply it. Thus the so-called assignment is contradictory in its terms; it is nothing more than a power of attorney from Chartré to Mr. Gethings to receive the monies and grant discharges. The advances, then, were made by the Bank upon the security of Maxham & Co.'s notes, and there is nowhere proved any undertaking to apply the monies received from the Commissariat to the payment of these notes: if any such agreement existed, it was one between Maxham & Co. and Chartré, to which the Bank was no party. The defence, therefore, has not been made out, but the facts which have been disclosed leave the question of the appropriation of these monies, sooner or later, to the part payment of the note sued upon, almost a matter of certainty. The four notes, endorsed by Chartré, which fell due on the 4th of October, were taken up by Maxham & Co's check. It is perfectly true that it is of very little consequence to Maxham & Co., whether they owe the money on notes or on a check, but Chartré was exonerated from all liability on those notes, which were not protested, when they were surrendered. The only note discounted by the Bank, which has been protested, is the one sued upon, consequently this is the only one upon which Chartré is indebted to the Bank. The Bank admit they owe him $1539, and if Chartré sets up compensation to this amount, it is difficult to see what the Bank can say to prevent it. I think the letter, written by Maxham & Co., on the 5th of October, 1859 has no weight It was written before the note sued upon in this cause was due, and at that time Chartré appears to have been released by the Bank upon the $4000 by the delivering up of the notes on which his name was endorsed. If released from the $4000, there is no ground on which Maxham & Co's request could be complied with by the Bank; Chartré owes the monies, but he owes them to Maxham & Co. I do not, therefore, think that should trouble the jury much. There is the admission that Maxham & Co., were unable to meet their notes for $4,500, but that will come up in another suit. Looking at the evidence, it seems to me that the jury will have no difficulty in coming to the conclusion, as to the first question submitted, that the money was advanced on the security of A. J. Maxham & Co's notes, and of that of receiving the money from the Commissariat, which was done. To the second question the jury will, no doubt, immediately answer in the affirmative. And as to the third question, the testimony shews that all the advances made by Chartré on that security have been repaid to the Bank by Maxham & Co. with the exception of the note sued upon. With reference to the $1500 there is, no doubt such a sum in the hands of the Bank now which might be applied by Chartré to the payment of the note in question, but as I look upon the case, Maxham & Co, the defendants have not proved any agreement, as set up by their plea, that the money was to be so applied. This is the whole case, and I conceive it will not take the jury long to deliberate upon it. It is an advantage to the parties to have men of such great commercial experience to decide between them.

The Jury then (2 o'clock P.M.) retired and, after an absence of about an hour and a half, returned into Court with the following unanimous verdict (which was read by Mr. Macpherson, the Foreman,) upon the questions submitted to them:—

1 Question.—Was there any and what agreement entered into, in the month of October 1858, between the plaintiffs and the defendants by which the plaintiffs agreed to make advances or loans of money to Pierre Chartré, to enable him to fulfil his contract with Her Majesty's Commissariat for the supply of beef to the garrison of Quebec, and, if so, upon what security?

Answer.—There was an agreement that the Bank was to advance money to enable Chartré to carry out his contract with the Commissariat, the security being A. J. Maxham & Co. pany's notes, endorsed by Chartré, and a tarial transfer of the money to be paid by the Commissariat for the beef and of a policy of insurance on the beef.

2. Question.—Did the plaintiffs, in pursuance of such agreement, make any advance or loan to the said Pierre Chartré for the said purpose, and was the promissory note sued upon a part of such advance or loan?

Answer.—Yes.

3. Question.—Did the plaintiffs receive back from the said Pierre Chartré any and what part of the advances and loans so made to him, and from whom?

Answer.—Not from Chartré, but they r

eived from the Commissariat Department, on ccount of Chartré, in various payments, $34,-52,47.

4. Question.—At the period of the maturity the note declared upon in the plaintiffs' de-aration had the same been paid and satisfied the plaintiffs to the extent of $1500 by means monies belonging to the said Pierre Chartré by him assigned to, and by the plaintiffs re-ceived.

Answer.—At the period of the maturity of the said note declared upon in the plaintiffs' declaration they had in their possession the sum of $1,530,48 applicable to the payment of the said note.

The Jury were then discharged, and the Court adjourned.

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