Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Demers v. *The Bank of Montreal, from the Court of Queen's Bench for Lower Canada, Province of Quebec; delivered 26th July* 1899.

Present, at the Hearing:

LORD WATSON.
LORD MACNAGHTEN.
SIR HENRY STRONG.

[*Delivered by Lord Macnaghten.*]

THIS is an Appeal from a Judgment of the Court of Queen's Bench for the Province of Quebec, which affirmed a Judgment of the Superior Court of the District of Quebec. The effect of the Judgment of the Superior Court was to find the Appellant liable to pay to the Bank a sum of $5,689 24 cents. The Appellant Demers appeals from the Order of the Court of Queen's Bench, and he appeals on two grounds. First, he disputes his liability, and then he quarrels with the amount. He says that he is under no liability to the Bank, but that if he is liable at all, the amount in which he has been condemned is larger than the amount really due.

Now as regards the facts bearing upon the principal question, the question of liability, there is no dispute whatever. The Appellant Demers was a broker, a money lender, and a money dealer in Quebec. He had two offices there. The business of money lending and money dealing was managed by him at one office; the rest of the business was managed by a very young man, who was a nephew of his, Eusebe Demers, at a different office. Demers the elder had an account with the Quebec branch of the Bank of

a (22)8515. 100.—8,99. Wt. 1274. [57.] E. & S.

Montreal, and he seems to have been acquainted with a good many of the clerks in the Bank. Among other clerks with whom he was acquainted was a person of the name of George Alexander Porter, who was a paying and receiving teller in the Bank. Porter had a salary from the Bank of $1,000 a year. He was a gentleman without any means of his own, and he was known to Demers to be in very straitened circumstances. In January 1895 he borrowed from Demers a sum of $300, which apparently Demers would not lend him without having the bill on which the money was advanced indorsed by another clerk. When this bill fell due in April 1895, Porter was unable to pay the debt in full. He paid a sum of $100 on account, and the bill was renewed for the balance. About the very time when Porter found himself unable to pay this trifling debt he embarked in speculations to a wild extent on the produce market at Chicago, with the assistance of Mr. Demers. The way in which these speculations were carried out was this:—Demers obtained an order from Porter to buy so much wheat or so much grain. He telegraphed that order to people of the name of Brosseau & Co. at Chicago as if it came from himself. Brosseau & Co. who also had an account with the Bank of Montreal at Quebec executed the order, but, of course, to protect themselves, they required a margin. Whatever margin Brosseau & Co. demanded from Demers, Demers demanded exactly the same amount from this impecunious clerk in the Bank. At first the speculations were successful and everything went right, as it generally does at first, in transactions of this sort, and Demers paid Porter what was due to him by cheque. After a short time the speculations became unfortunate, and then, at first, Porter paid Demers in money what was required

to cover margins. But about the beginning of June 1895 Porter's means were absolutely exhausted, and then he suggested to young Demers, who seems to have managed this part of the business, that he should put down on what is called a paying-in slip the amount required to make good the margins to Brosseau & Co.; that he should hand the slip over the counter without any money, that Porter should initial it, and hand the slip so initialled to the ledger clerk who distributes the money in due course to the proper accounts. This was the practice which was adopted, and when these slips —fictitious slips they are called, and they were fictitious—were handed in, Demers telegraphed to Brosseau & Co. that they were placed in funds with the Bank at Quebec to such and such an amount, whatever it might be. This course of business could not last. It went on to the end of July, and then Porter was found out. He was short of cash which he ought to have had in hand. He at once acknowledged his guilt; he was taken into custody, prosecuted, convicted, and sentenced. When the Bank found where their money had gone to, very naturally they called upon Demers to make it good. Strange to say, Demers denied his liability. The Bank were accordingly compelled to take proceedings against him. They said, "We have paid "Brosseau & Co. on your account so much "money, and you have not reimbursed us." "His answer was, "Why, you have been "paid." But how were they paid? If Demers were to state that defence in plain English, it would amount to this: "You, the Bank, have "been paid by monies stolen from your own "coffers by a dishonest clerk, who owed me "money, and took this way of squaring the "account." Of course that defence would not hold good for a moment. So far as the decision

under Appeal finds liability on the part of Demers, nobody can contest its absolute propriety.

With regard to the other question as to the amount, undoubtedly the figures are somewhat confused. There are decisions of two Courts against Mr. Blake's client. A question of fact has been found by two Courts against him. But still if he could show error on the face of the accounts, their Lordships think it would be open to him to contest the matter. However, the Solicitor General for Canada, who appears on behalf of this Bank—a Bank in a very high position, who, of course, would not take advantage of a slip of any kind—has offered, inasmuch as there is an appeal by the Bank from the decision of the Superior Court to the Supreme Court of Canada, that Mr. Blake's client shall be allowed to show there, if he can, that too much has been found due from him. That undertaking will be entered upon the Record, in order that there may be no dispute hereafter about it, because it is impossible to say into whose hands a case of this sort may come.

That being so, their Lordships will humbly advise Her Majesty to dismiss this Appeal. The costs of the Appeal will be paid by the Appellant. Of course their Lordships cannot bind the Supreme Court. They will take whatever course they think best.