

ROBERT GILLESPIE *és qualité* (PLAIN- } APPELLANT;  
 TIFF)..... }

1887

\* Mar. 8.

AND

\* June 20.

ROMEO H. STEPHENS (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR  
 LOWER CANADA (APPEAL SIDE).

*Reddition de comptes—Settlement by mandator with his mandatary  
 without vouchers, effect of—Action on reformation de compte.*

*Held*, affirming the judgment of the court below, that if a mandator  
 and a mandatary, labouring under no legal disability, come to  
 an amicable settlement about the rendering of an account due  
 by the mandatary without vouchers or any formality whatsoever,  
 such a rendering of account is perfectly legal; and that if sub-  
 sequently the mandator discovers any errors or omissions in the  
 account his recourses against his mandatary is by an action *en*  
*reformation de compte*, and not by an action asking for another  
 complete account.

APPEAL from the judgment of the Court of Queen's  
 Bench for Lower Canada (appeal side) (1), reversing the  
 judgment of the Superior Court in favor of the plain-  
 tiff.

The present action was brought by the appellant, a  
 resident of London, England, in his capacity of devisee  
 in trust, and sole acting executor of the last will and  
 testament of the late Robert Gillespie.

The plaintiff in his declaration alleges:—

\* PRESENT—Sir W. J. Ritchie C.J., and Strong, Fournier, Henry and  
 Taschereau JJ.

(1) <sup>e</sup>M. L. R. 3; Q. B. 167.

1887

GILLESPIE  
v.  
STEPHENS.

That after the said twenty-sixth day of January, eighteen hundred and sixty-four, up to the first day of July, in the year eighteen hundred and eighty-one, the said defendant continued to act as the agent of the said plaintiff in his said capacity, and received as such large sums of money arising from the sales made by him of property belonging to the said estate and succession, as well as those theretofore made by others and from various other causes and sources within the scope of his said agency.

That from time to time the said defendant rendered accounts of his said gestion to the said plaintiff, which the said plaintiff then received in good faith and believed the same to be complete and accurate.

That since the rendering of the last account, to wit: since the first day of July, eighteen hundred and eighty-one, the said plaintiff hath discovered that the said accounts are inaccurate, incomplete and misleading, and that they do not contain a full statement of all the monies had and received by the said defendant in his said capacity, and that the said defendant hath not returned the whole of the amounts which he received as the agent of the said plaintiff in his said capacity, and that divers large amounts still remain in his hands.

That it has come to the knowledge, amongst other things, of the said plaintiff that the following sums of money have been received by the said defendant in his said capacity, which have not been accounted for or paid over to the said plaintiff, to wit: a payment of thirteen hundred and eighty-two dollars and forty-five cents made to him by Messrs. Whitney and Morton on or about the seventh day of July, eighteen hundred and seventy-five; a sum of seven hundred and twenty dollars and seventy cents paid to him also in his said capacity by the same parties; by one F. H. Lalonde the sum of two hundred and forty-nine dollars and twenty-five cents; by one Francis Villeneuve fifty-four dollars and five cents; by Antoine Mercier two hundred and fifty six dollars and forty cents; by one Robertson Burch one hundred and fifty one dollars and eighty-two cents.

That the said defendant has never put in the hands of the said plaintiff or of his agent, legally qualified to demand the same, the correspondence, deeds, vouchers and other records belonging to the said plaintiff in his said capacity, and entered into, made and recorded in the books kept by him as received from the debtors of the said estate to enable the said plaintiff to properly audit the accounts of the said defendant.

That it is only since the said defendant has ceased to act as the said plaintiff's said agent under the said power of attorney, and since other persons have become in a measure acquainted with the various sums had and received by the said defendant in his said

capacity that the said plaintiff has become aware or has had reason to believe that the various accounts rendered heretofore by the said defendant of his said gestion were incorrect, incomplete and misleading.

That the plaintiff hath frequently requested the said defendant to revise his said accounts and to render him a new, complete and truthful account of his said trust, but the said defendant hath failed so to do and now doth refuse the same.

That the plaintiff is entitled to have a full account of the gestion of the said defendant in his said capacity, with the vouchers in support thereof, and the possession of all letters, agreements, contracts, deeds, accounts and other documents relative to the same rendered under oath and in due course of law.

Wherefore the said plaintiff, in his said capacity, prays that any and all pretended accounts rendered by defendant to plaintiff be declared null and void and of no effect; that the said defendant be ordered to render an account, under oath, of his gestion from the date whereon he entered upon the said duties, to wit, from and after the twenty-sixth day of January, eighteen hundred and sixty-four, in due form of law, and to submit therewith for inspection and examination all correspondence had by him with the various debtors of the estate, as well as all accounts kept by him during the said period in connection with the said estate, and all vouchers, documents, contracts, agreements or deeds in his possession respecting the same, and that after such accounts have been rendered and inspection allowed, the plaintiff be allowed a reasonable time to examine the same, and to accept or contest the same as may be found right and proper; the whole within such delay as may be ordered by this court, unless defendant prefer to pay plaintiff the sum of ten thousand dollars; the whole with costs against the said defendant, including costs of exhibits should he contest the said plaintiff's *demande*, the said plaintiff reserving to himself his right to take such further and other conclusions in the premises as to law, justice and the practice of this court appertain, even again the whole with costs.

The respondent pleaded to the action admitting that he had acted as agent for a number of years, but alleged that he had always rendered accounts of moneys received by him from time to time, which accounts were verified and accepted by the appellant. That about five years previous to the institution of this action, the respondent gave up the agency and retired from business that the accounts rendered by

1887

GILLESPIE  
v.  
STEPHENS.

1887  
 GILLESPIE  
 v.  
 STEPHENS.

him to appellant had been by appellant submitted to a professional accountant in London, who examined and verified the same, and that the appellant by a letter of the 5th February, 1879, declared his satisfaction with all said accounts; that said respondent having retired from business, and having no further occasion for his books and documents (the accumulation of years) destroyed the most of them, and that it was impossible for him to render anew to the appellant any account of his administration of the agency, owing to the absence of said books, documents, and papers; that on production of all accounts by respondent rendered to appellant, he was willing to re-examine the same and to give all information in connection therewith; that although the respondent had requested the said accounts from appellant, they have not been produced; that with reference to the items specially referred to in appellant's declaration, it was impossible for him (respondent) to say whether he had received the said moneys in the absence of said accounts, but if he had received the same, they were remitted by him to the appellant; that under the circumstances the respondent was not legally bound to render any such account as called for by the appellant's declaration: that the appellant's action was frivolous and vexatious.

The judgment of the Superior Court was in favor of the plaintiff. The judgment of Court of Queen's Bench is as follows:—

Considering that the respondent, who has received and accepted the accounts to the number of fifty-five, which the appellant has rendered of his administration of the property of the respondent from the time he was appointed his agent and attorney in 1865, till the first day of July, one thousand eight hundred and eighty-one, when he ceased to be such agent and attorney, and that, without any objection as to the form in which the said accounts were rendered, has no right to ask, as he has done by his declaration, that the said accounts be declared null and set aside, and that the appel-

lant be ordered *en justice* to render another and complete account of the whole of his administration.

And considering that the respondent, upon his allegation that he has discovered errors and omissions in the said accounts, is only entitled to demand that such errors and omissions, which he may establish by sufficient evidence, be corrected and the accounts reformed as regards such errors and omissions, and that the appellant be condemned to pay such sums of money as may be found due by him to the respondent after the correction and reformation of such accounts.

The court reversed the judgment of the Superior Court and dismissed the respondent's action, reserving however to respondent his recourse against appellant for all sums not accounted for and for all balances due after reformation of accounts.

*Fleming* Q. C. and *Nicolls* for the appellant referred to Troplong (1); Art. 1710 C. C. *Muldoon v. Dunne* (2); Journal du Palais (3).

*Carter* for the respondents cited Pigeau (4); *Cummings v. Taylor* (5); *Blais v. Vallières* (6); *School Commissioners of Chambly v. Hickey* (7).

Sir W. J. RITCHIE C.J.—This being rather matter of procedure than otherwise in view of the plaintiff's letter to the defendant dated 5th February, 1879, in which he says:—

I have recently had a thorough audit of the accounts of my late father's estate, and I am glad to say they come out very satisfactorily.

The audit has been by an official accountant, and therefore has been a complete scrutiny. In going over the voluminous accounts from your side it has been satisfactory to us to find them on the whole so correct: there is, however, an error in the account as rendered by you in 1871, commencing in February and ending in May of same year; if you will refer to the entry under date of the 29th May, '71, on the credit side you will observe that you take credit for remittance of \$3,989.61 in bill of exchange for £560 6s. 9d., whereas

(1) Vol. 18 p. 234.

(2) 7 L. N. 239.

(3) Vol. 9 p. 76.

(4) 5 ed. Verbo "Compte" vol.

2 p. 423.

(5) 4 L. C. J. 304.

(6) 10 Q. L. R. 382.

(7) 1 L. C. J. 189.

1887

GILLESPIE  
v.  
STEPHENS.

1887 \$3,989.61 présents at 10 $\frac{3}{8}$  per cent. premium of exchange £813 5s.  
 7d.;—will you look into this and explain.

GILLESPIE

v.

STEPHENS.

Yours faithfully,

ROBT. GILLESPIE.

Ritchie C.J.

R. H. STEPHENS, Esq, Montreal.

it appears to me that the decision of the Court of Appeal is much more consistent with the justice of the case, and the dealings of the parties, in reference to the rendering and settlement of accounts from time to time by the parties than the judgment of the court of first instance, which :—

Côdamne le défendeur à rendre compte au demandeur de sa gestion et administration depuis le vingt-six de janvier mil huit cent soixante et quatre jusqu'au premier de juillet mil huit cent quatre vingt-un, sous serment, avec pièces justificatives à l'appui et à remettre au demandeur tous contrats, actes, comptes, livres de comptes, correspondances et autres documents concernant la dite gestion et administration qu'il a ou peut avoir en sa possession, sous un mois de la signification qui lui sera faite du présent jugement à moins que le défendeur n'aime mieux payer au demandeur la somme de dix mille piastres, ce qu'il sera tenu d'opter dans le dit délai, le tout, avec dépens contre le défendeur qui a contesté la dite action, desquels dépens distraction est accordée aux avocats du demandeur, M<sup>tres</sup>. Church, Chapleau, Hall & Atwater, avocats du demandeur és qualité.

The judgment and reservation of the Appeal Court gives to the plaintiff, in my opinion, all he is entitled to ask for and therefore I think this appeal should be dismissed.

STRONG and FOURNIER JJ. concurred in the judgment of Taschereau J. in dismissing the appeal.

HENRY J.—I am of the same opinion. The appellant by the accounts rendered to him from time to time got all the information it was ever intended should be given by an agent to his principal. The accounts rendered are alleged to contain one or two errors. He (the appellant) knew what the errors were, and although he might have an action to recover the money which such errors show him to be entitled to, he has

no right to force the respondent to give another account. I think therefore the appeal herein should be dismissed with costs.

1887  
 GILLESPIE  
 v.  
 STEPHENS.

Henry J.

TASCHEREAU J.—I am of opinion that this appeal should be dismissed. By the judgment appealed from it is held that if a mandator and a mandatary, laboring under no legal disability, come to an amicable settlement about the rendering of account due by the mandatary, without vouchers or any formality whatsoever, such a rendering of account is perfectly legal, and that if, subsequently, the mandator discovers any error or omissions in this account, his recourse against his mandatary is by an action *en redressement de compte*, and not by an action asking another complete account. The cases cited by the respondent establish clearly that the jurisprudence in Quebec is in that sense. Art. 21 ch. 29 of the ordonnance of 1667 has always been extended to *comptes rendus à l'amiable*. In France also the courts refuse in such a case the action to account; *re Dephelines*, in the Orleans Court (1); *re Pellain*, Court of Cassation (2). In this last case, it was held that even for an account rendered verbally, it was the action *en redressement* only that the mandator should have recourse to. I refer also to 2 Boitard Proc. Civ. page 164 and the cases there cited. Title 29 of the Ordonn. of 1667 evidently bears only on accounts rendered in justice, with the exception of art. 23 which expressly enacts that accounts may be rendered *à l'amiable*. Stricter rules are followed by the courts when the account is between a tutor and his pupil, which is not the case here.

*Appeal dismissed with costs.*

Solicitors for appellant: *Church, Chapleau, Hall & Nicolls.*

Solicitors for respondent: *Kerr, Carter & Goldstein.*

(1) S. V. 55. 2. 298.

(2) S. V. 57. 1. 102.