

1889
 *Oct. 26. THOMAS McDONALD AND ALBERT } APPELLANTS;
 EDWARD KEMP (DEFENDANTS).... }

AND

ROBERT J. GILBERT (PLAINTIFF).....RESPONDENT
 ON APPEAL FROM THE SUPREME COURT OF NEW
 BRUNSWICK.

*Appeal—Action for small amount—Propriety of—Partnership—Evidence
 of—Names of partners on letter heads.*

Although the court cannot refuse to hear an appeal in a case in which only twenty-two dollars is involved, yet the bringing of appeals for such trifling amounts is objectionable and should not be encouraged.

The representation of an agent that his principals are a firm in a distant Province, and that such firm is composed of A. and B., coupled with evidence of receipt by the person to whom the representation is made of letters from one of the alleged members of the firm, written on paper on which the names of such members are printed, in answer to letters from such person, is *prima facie* evidence that A. and B. constitute said firm.

APPEAL from a decision of the Supreme Court of New Brunswick, setting aside a non-suit granted at the trial and ordering judgment to be entered for the plaintiff.

The plaintiff, Gilbert, met in St. John, N.B., one Eddy, who represented himself to be the agent of the firm of McDonald, Kemp & Co., of Toronto, and as such agent sold the plaintiff a quantity of metallic shingles, to be delivered at St. John at certain prices, freight free. At the time of this transaction the agent informed the plaintiff that the defendants (appellants) composed the said firm of McDonald, Kemp & Co.

The plaintiff immediately wrote to the defendants stating the terms of his agreement with the agent.

*PRESENT: Sir W. J. Ritchie C.J. and Strong, Taschereau, Gwynne and Patterson JJ.

The defendants shipped the shingles and drew on plaintiff for the price; he paid the draft and went to the railway station for the shingles when he found that the freight, some \$22, had not been paid and he was obliged to pay it; he drew on the defendants for the amount but they refused to accept the draft and this action was brought to recover the \$22.

1889
 MCDONALD
 v.
 GILBERT.
 —

The only question raised in the case which was dealt with on the appeal was whether or not there was sufficient evidence of the defendants composing the firm of McDonald, Kemp & Co. In addition to the statement of the agent that they were the members of that firm, the plaintiff put in evidence letters received by him in answer to letters written to said firm and similar letters received by his solicitors in the course of correspondence about plaintiff's claim. All these letters were written on paper with printed headings containing the firm name and the name "Thomas McDonald" in one corner and "A. E. Kemp" in the other.

The learned judge who presided at the trial thought the evidence of partnership insufficient and on that and other grounds of motion therefor non-suited the plaintiff. On motion to the full court pursuant to leave reserved at the trial the non-suit was set aside and judgment entered for the plaintiff for \$22.68. From that judgment the defendants appealed to the Supreme Court of Canada.

Weldon Q.C. for the appellants.

Barker Q.C. for the respondent.

Sir W. J. RITCHIE C.J.—(His Lordship during the argument stated that while the court could not refuse to hear an appeal in which such a trifling sum was involved, yet the bringing of such appeals was highly objectionable and to be in every way discouraged. He

1889
McDONALD
v.
GILBERT.
Ritchie C.J.

hoped it would be the last instance of the kind in this court).

We have no doubt at all in this case. Eddy was authorised to sell the singles. The purchaser very properly inquired who were the members of the firm from whom he purchased, and was informed by the agent who they were. He then corresponded with the firm and received replies written on paper containing the names of the different partners. I think the evidence most conclusive, particularly when the defendants did not attempt to deny the partnership.

The other judges concurred.

Appeal dismissed with costs.

Solicitors for appellants : *Weldon & McLean.*

Solicitors for respondent : *G. C. & C. J. Coster.*
