

ROUX *v.* CLARKSON

1938

* Dec. 5.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE,
PROVINCE OF QUEBEC

Res judicata—Stock exchange—Evidence—Valid proof—Statements of account—Action dismissed sauf à se pourvoir.

APPEAL by the defendant appellant from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Gibsone J. and maintaining the plaintiff respondent's action.

The appellant, during the period December, 1930, to July, 1931, entered into a number of transactions with Carroll & Wright, brokers, of the city of Toronto, and was indebted to them in the sum of \$3,542.55 when they went into bankruptcy on or about the 10th September, 1931. The respondent, having been appointed trustee in bankruptcy, instituted against the appellant an action on the 17th November, 1932, which was, however, dismissed by the Hon. Mr. Justice Prevost on the 4th April, 1934, on the ground that it was drafted in the form of an action for goods sold and delivered, without alleging the actual relations between the parties, of broker and client, and the advances made by the former in execution of his orders. The action was, however, dismissed without costs "et sauf à se pourvoir." The present action was instituted on the 19th February, 1935, and alleged in detail the purchase and sales of stock on orders received from the appellant, and the respondent claimed a sum of \$3,566.28, the difference between the amounts claimed in the first and second actions being added interest on the sums due.

The action was maintained by the Superior Court, Gibsone J. and on appeal, the judgment was affirmed by the Court of King's Bench, appeal side (1).

The Supreme Court of Canada dismissed the appeal with costs.

Appeal dismissed with costs.

Paul Belcourt for the appellant.

J. A. Legris K.C. for the respondent.

* PRESENT:—Duff C.J. and Rinfret, Crocket, Kerwin and Hudson JJ.

(1) (1937) Q.R. 64 K.B. 319.