Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pierre Gravel v. *Pierre P. Martin et. al., from the Court of Queen's Bench for Lower Canada, in the Province of Quebec (Appeal side); delivered 5th May* 1876.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

ON the 18th of June 1869 the Defendant, as a clerk or servant of the Plaintiffs, was entrusted by them with a considerable sum of money for the purpose of carrying it to England to make purchases for them, and to pay debts which they owed in England. The money was packed by the Plaintiffs in a valise, and that valise was put into a cabin, No. 101, which had been taken for the Defendant in a steamer called the "Quebec," a river steamer, in which the Defendant was to go from Montreal to Quebec, in order to proceed to England on board a transatlantic steamer which lay at Quebec. The Defendant, having accepted the money, it was necessary for him to account for it if he did not use it in the manner in which he was employed to use it; and the account of the money which he gave to the Plaintiffs was this: that whilst he was on board the steamer "Quebec" a portion of the money was stolen, and that he had put the rest into the hands of the captain, who had handed it over to the Plaintiffs. It is admitted that the *onus* lay upon the Defendant to prove that the robbery

was committed. Many witnesses were called on the part of the Defendant to prove that the money was stolen, and the Court must judge of the fact whether the money was or was not stolen by the evidence given at the trial by witnesses who were subjected to cross-examination, and not by depositions which were given before the magistrates, when the Plaintiffs had no opportunity of cross-examining the deponents.

The learned Judge who tried the case in the first instance, Mr. Justice Beaudry, says,—
" The Defendant has not proved the exception
" which he has pleaded, by which he alleged
" that he was the victim of a robbery of the
" bulk of the money which had been confided to
" him, and he has not been able to discharge
" himself from the obligation to account for the
" money."

The case was appealed to the Court of Queen's Bench, and was argued before four Judges, of whom the majority substantially affirmed the decision of Mr. Justice Beaudry. One of the Judges, however, Mr. Justice Taschereau, thought that the judgment of Mr. Justice Beaudry was wrong, and what we are called upon to do now is to reverse the decision of the majority of the Judges of the Court of Queen's Bench, and to say that they ought to have reversed the judgment of Mr. Justice Beaudry.

Their Lordships are always reluctant to reverse a finding upon a mere question of fact, even by a single Court of Justice, but they are still more reluctant so to do when the decision of the Court who tries the case in the first instance has been affirmed by a superior Court of Justice, and when there are two concurrent judgments upon a question of fact. As a general rule their Lordships do not interfere with such a finding, and there must be some

very good reason to induce them to reverse a decision of a Court upon a question of fact, when that decision affirms the decision of a lower Court.

Now, dealing with the evidence which was given upon the trial, we are met by the statement which the Defendant himself gave three days after the alleged robbery was committed. He says the robbery was committed on the 19th June. On the 21st of June he made a statement before the magistrates as to the circumstances under which the alleged robbery was committed. Now the circumstances which he then related, when the facts must have been fresh in his memory, are wholly at variance with the evidence which he gave at the trial, both as to the time at which the robbery took place and as to the place at which it took place. On the trial he stated that when he found the steamer moving he went to the steward to ask him to assist him in removing his valise. He says that about 10 minutes elapsed between the time when he left his cabin and all was right and the time when he found the steward. But upon his first examination before the magistrates he stated that the robbery had taken place before the steamer left the quay, and that he gave information to the police upon the subject; and one of the detective police officers also states that Defendant told him that the robbery had taken place before the steamer left the quay. Then the question is, are we to say that the Judges were wrong in disbelieving the evidence which the Defendant gave upon the trial of the cause when he had given previously, on the 21st of June 1869, only two days after the alleged robbery had taken place, and when the facts must have been fresh in his memory, a statement wholly inconsistent with that evidence?

There are many other discrepancies between the evidence which he gave at the trial and the statement which he made before the police magistrates; and there are also discrepancies between his evidence and the evidence of Buron the steward. He says that when he looked into the cabin he saw the valise on the floor, opened, and then he exclaimed "My God! I have been robbed." Buron, on the other hand, stated in his affidavit, that when he entered the cabin the valise was on the berth, and that the Defendant opened the valise. So that the valise must have been lying, if Buron's evidence is correct, on the berth in the cabin, closed up; and if it was in that state, the Defendant must have been wrong in stating that when he looked into his cabin he saw the valise lying on the ground, opened, and everything in disorder. But it must be said, with reference to that statement which Buron made in his affidavit, that he did not state in his evidence anything as to where the portmanteau was found. At page 64, line 20, he said: "After that I passed by the cabin "No. 101; the Defendant followed me, and we "passed behind the cabin. The Defendant "entered into the cabin through the window. "As to me, I do not recollect whether I entered "in the cabin or whether I remained at the "window, but I recollect well upon entering "the cabin the Defendant lifted the cover of "the valise and took out his clothes, which he "threw upon the ground."

Now, with the inconsistent statement which the Defendant made before the magistrates when the matter was fresh in his memory, we are called upon to say that the two Courts of Justice who have found that the Defendant had failed to prove that the robbery was committed were in error, and that we ought to reverse their

decision, and find that the Defendant has proved satisfactorily by the evidence at the trial that a robbery was committed.

None of the Judges found, as a fact, that the Defendant himself committed the robbery, and their Lordships abstain from expressing any opinion upon that subject. All that the Judges did below was to find that the Defendant had not proved that the money was stolen, and that is all that their Lordships do in affirming the judgment of the Court of Queen's Bench.

Under these circumstances their Lordships will humbly recommend Her Majesty to affirm the judgment of the Court of Queen's Bench. The Appellant must pay the costs of this Appeal.