

& Co., it is responsible to plaintiff for the amount of the unpaid drafts, less any sum not actually recovered from others.

Without further comment, we are of opinion that there was evidence of negligence or want of due care on the part of defendant, which, taken in connection with the positive instruction of the plaintiff, should have been submitted to the jury. The judgment of the Circuit Court will, therefore, be reversed, with instructions to grant a new trial.

So ordered.

McCARTHY v. PROVOST.

In a suit for partition, the value of the undivided part in controversy, and not of the lands, determines the appellate jurisdiction of this court.

APPEAL from the Circuit Court of the United States for the District of Louisiana.

Mr. Thomas J. Semmes for the appellant.

Mr. Henry B. Kelly for the appellee.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

We have no jurisdiction in this case. The suit was brought to recover one two hundred and fortieth part of certain lands, and for a partition so as to set off to the appellant in severalty that interest. It is averred in the bill that "the value of the property sought to be partitioned amounts to more than \$5,000," but the matter in dispute on this appeal is only one two hundred and fortieth part of the whole property, as that is all the appellant claims. Our jurisdiction, therefore, depends on the value of that part, which certainly is not shown to be more than \$5,000.

Appeal dismissed.