

the Court of Appeal (Williams, Romer, and Stirling, L.JJ.) reversing Kekewich, J., held that the defendant was not entitled to use the crossing for the purpose of conveying goods and traffic so as substantially to increase the burden of the easement by altering or enlarging its character, nature or extent as enjoyed at or previously to the date of the covenant, or as since enjoyed by the defendant's predecessors in title, provided such subsequent enjoyment, by reason of acquiescence or otherwise, was binding on the plaintiffs, and a declaration was made accordingly.

REPORTS AND NOTES OF CASES.

Dominion of Canada.

SUPREME COURT.

B. C.]

PITHER v. MANLEY.

[Nov. 17, 1902.]

Debtor and creditor—Payment—Accord and satisfaction—Mistake—Principal and agent.

On being pressed for payment of the amount of a promissory note the defendant offered to convey a lot of land, which he then shewed to the plaintiffs' agent, to the plaintiffs in satisfaction of the debt. The agent, after inspecting the land, made a report to the plaintiffs, but gave an erroneous description of the property to be conveyed. On being instructed by the plaintiffs to obtain the conveyance, the plaintiffs' solicitor observed the mistake in the description and took the conveyance of the lot which had actually been inspected at the time the offer was made. More than a year afterwards the plaintiffs sued the defendant on the note, and he pleaded accord and satisfaction by conveyance of the land. In their reply the plaintiffs alleged that the property conveyed was not that which had been accepted by them, and at the trial the plaintiff recovered judgment. On appeal to the full Court the trial Court judgment was reversed and the action dismissed.

Held, affirming the judgment appealed from (9 B.C. Rep. 257), that the plaintiffs were bound to accept the lot which had been offered to and inspected by their agent in satisfaction of the debt, and could not recover on the promissory note. Appeal dismissed with costs.

Davis, K.C., for appellants. *Duff*, K.C., for respondent.