

C. L. Cham.]

NOTES OF RECENT DECISIONS—BEST V. HILL.

[Eng. Rep.]

## CANADA REPORTS.

## ONTARIO.

## COMMON LAW CHAMBERS.

## NOTES OF RECENT DECISIONS.

## GROVES V. MCARDLE.

*Insolvent Act of 1869—"Trader"—Pleading several matters—Estoppel.*

Action by official assignee to recover a debt due to an insolvent. Plea that insolvent had not been a trader within the insolvent act of 1869. Leave to take issue on this plea, to reply specially that defendant was estopped from this defence, and to demur was refused.

## PLIMSOLL V. BLACK.

*Pleading several matters.*

A plea of payment, and a plea of payment into Court cannot be pleaded together to the same cause of action.

## MCDONALD V. MCEWAN.

*Pleading—Further time to plead.*

When further time to plead is allowed by order, the extra time is to be computed from the date of the order, and not from the expiration of the original time allowed by law.

## ABELL V. GLEN.

*Covenant—Never indebted—Nullity or irregularity.*

To an action in covenant the defendant pleaded never indebted.

*Held*, not a nullity, but merely an irregularity. Treating a pleading as a nullity does not prevent its afterwards being attacked as an irregularity.

## ENGLISH REPORTS.

## COURT OF COMMON PLEAS.

## BEST AND ANOTHER. V HILL.

*Equitable plea—Set-off of unliquidated damages—General issue.*

Declaration for money lent, money paid, and commission for the plaintiffs having for and at the request of the defendant, provided the money for paying, and paid divers bills of exchange.

Plea on equitable grounds that defendant assigned to plaintiffs for sale, and as security for the payment of the said moneys, and of certain accommodation acceptances of the plaintiffs' goods described in certain bills of lading which defendant also assigned to plaintiffs as security as aforesaid, and in order that plaintiffs

might, out of the proceeds of the said goods and by proper sales thereof, pay and satisfy the said moneys and acceptances. Allegation that the plaintiffs took possession of the goods and bills of lading, and took such bad care of part of the said goods that the same were deteriorated in value, and were sold by plaintiffs at lower prices than they might have been, and plaintiffs also negligently sold the same goods below the market price, and received the proceeds thereof. Further allegation that the said goods might, and ought to have realised by the sales thereof more than sufficient to have paid and satisfied the said moneys and acceptances, and that through the mere negligence, &c., of plaintiffs, the security of the said goods became lost to the defendant, and the said goods and the proceeds thereof became and were insufficient to discharge the said acceptances and moneys.

*Demurrer:*

*Held*, first, that the plea was bad as amounting to a set-off of unliquidated damages; and secondly, that it could not be supported as a plea of the general issue.

[27 L. T. N. S. 490—Nov. 14, 1872.]

The declaration stated that the plaintiffs sued the defendant for money lent by the plaintiffs to the defendant, and for money paid by the plaintiffs for the defendant at his request, and for commission for and in respect of the plaintiffs having for the defendant at his request by their bankers, being their agents for that purpose, provided the money for paying, and paid divers bills of exchange, and for interest upon money due from the defendant to the plaintiffs, and by the plaintiffs forborne at interest to the defendant at his request, and for money found to be due from the defendant to the plaintiffs on accounts stated between them.

The fourth plea (as amended) was as follows: And for a fourth plea, and as a defence on equitable grounds, the defendant says that he assigned and transferred to the plaintiffs for sale, and as a security and means for the payment of the said moneys in the declaration mentioned, and certain accommodation acceptances of the plaintiffs certain goods mentioned and described in certain bills of lading, which the defendant then also assigned and transferred to the plaintiffs as a security for the payment of the said moneys and acceptances, and in order that the plaintiffs might by and out of the said goods, and by the due and proper sales of the said goods, pay and satisfy the said moneys and acceptances. And the defendant further says that the plaintiffs took possession of the said goods under and by virtue of such bills of lading, and took such bad and improper care of a part of the said goods whilst the same were in their possession as aforesaid, that the same when sold by the plaintiffs as hereinafter mentioned became and were in bad condition, much deteriorated in value, and the same by reason thereof, were sold by the plaintiffs at much lower and