

## North-West Territories.

JUDICIAL DISTRICT OF NORTHERN ALBERTA.

SUPREME COURT.

Rouleau, J.]

IMPERIAL BANK v. HULL.

[April 19.

*Bank Act, s. 73—Sight draft with bill of lading attached—Surrender of bill without acceptance of draft—Perishable goods spoiled in transit—Liability of drawee.*

The defendant agreed to purchase from the Parsons Produce Company, who were doing business at Exeter, Ont., and Winnipeg, Man., a carload of poultry to be delivered to him at Calgary. The poultry was shipped from Centralia, Ont., and a bill of lading taken in favour of the Molsons Bank. At the request of the shippers the Molsons Bank endorsed the bill of lading to the plaintiff bank and returned it to the shippers. The Parsons Produce Company, who, at their Winnipeg branch, drew at sight on the defendant for \$2,885.89 through their plaintiff bank. The bank cashed the draft at Winnipeg and took the bill of lading as collateral security. The draft was forwarded to the plaintiff's Calgary branch with the bill of lading attached, with instructions to surrender the bill of lading only on payment of the draft. The plaintiff bank presented the draft several times to the defendant at Calgary for acceptance but were told that the goods had not arrived. On Dec. 18th, 1899, the carriers, the Canadian Pacific Railway Company, informed the defendant that the carload of poultry had arrived, and the defendant went to the plaintiff bank, where he kept an account and did a large business, and asked for the bill of lading, saying that he wanted it in order to obtain inspection of the goods. The acting manager of the plaintiffs then endorsed the bill of lading to the defendant and handed it to him, saying at the time, "You will let us have a cheque as usual," to which the defendant did not reply, but left the bank. He went to the railway company's office, and finding that he would have to surrender the bill of lading before being allowed to inspect the goods, he therefore surrendered it and it was cancelled by the company's agent. The defendant then unloaded the poultry, took it to his shops and warehouses and reshipped a large portion of it to his branches at other towns on the same day, viz., 18th December. On the afternoon of the 19th he wired the Parsons Produce Company at Winnipeg that the poultry was defective, and on the 20th sent a further wire saying that he held the poultry at their disposal and demanding compensation. He did not inform the plaintiff bank until the