

Ct. of App.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

note made by the defendant, as such collateral security. When M.'s note fell due, he did not pay it, but paid \$25, and gave a new note for \$175.

Held, that the defendants remained liable to the plaintiffs to the extent of the renewal note, which was in reality a continuance of the \$200 note. In no sense can renewing a bill or note be treated or taken to be payment.

J. K. Kerr, Q.C., for appeal.

Johnson, contra.

[Jan. 17.]

RE HALL'S EXTRADITION.

Appeal—Extradition—High Court, appeal from—Court of Appeal equally divided, effect of—Habeas Corpus—Res Judicata—Binding authority.

The prisoner was remanded for extradition by the Chancery Division of the High Court of Justice. On appeal, this Court was equally divided. A second writ of *habeas corpus* was then obtained, and the prisoner was again remanded for extradition by the unanimous judgment of the Common Pleas Division, before whom the question was then argued, and an appeal from that decision was dismissed.

Per HAGARTY, C. J. [SPRAGGE, C. J. O., concurring].—The appeal could not be entertained, there having already been an appeal by the prisoner to this Court, from the judgment of the Chancery Division, which was binding on the prisoner, and he was not at liberty to make repeated applications to this Court on the same state of facts.

Per PATTERSON, J.A.—Under the Judicature Act there is not any distinction in the several Divisions of the High Court; therefore a decision of any one of them is a decision of the High Court; consequently, this matter had already been disposed of on the appeal from the Chancery Division.

Per BURTON and PATTERSON, JJ.A.—The rule of practice in the House of Lords on an equal division, does not apply to other appellate tribunals, although as here the appellate court is the one of last resort. The effect of this Court being equally divided is simply that the matter drops, and therefore the appeal is dismissed, the judgment remaining undisturbed; at the same time it is not viewed as a binding authority.

CHANCERY DIVISION.

Proudfoot, J.]

[Jan. 31]

COURT V. HOLLAND.

Mortgagee and mortgagor—Account—Evidence—Appeal from Master's report—Money lent—Amendment of account.

In taking an account of moneys due on a mortgage given to secure whatever might be due for money lent, part of the amount claimed was alleged to be due in respect of a bill of exchange drawn by the mortgagors and accepted by the mortgagees. It was sworn by one of the mortgagees that this bill of exchange had been accepted for the accommodation of the mortgagors. But in a statement of "bills receivable" in a list of notes due by the mortgagors to the mortgagees, subsequently made out by a clerk of the mortgagees, this item was not included.

Held, notwithstanding the omission of this item from the accounts, the positive evidence of the mortgagee that the bill was for the accommodation of the mortgagors, and the circumstances under which the mortgage was given, were sufficient evidence to rebut the *prima facie* presumption that the bill was accepted in payment of a debt due by the mortgagees to the mortgagors; and an appeal from the Master's report, disallowing the item, was allowed.

Where mortgagors who had given a mortgage to secure whatever might be due from the mortgagors to the mortgagee for moneys lent, were authorized to receive, and did receive, as agents of the mortgagees, a sum of money due to the mortgagees upon another mortgage, which moneys they retained.

Held, that the moneys as received by the mortgagors, were in effect on being retained by them, "moneys lent" and secured by the mortgagee, and an appeal from the Master's report, disallowing this item, was allowed.

Where a mortgagee in putting in his claim before the Master, under a mortgage given to secure whatever might be due for moneys lent, in his account claimed an item of \$1,434.06 for "balance of merchandize account," and subsequently asked to be allowed to amend the account by claiming it to be a "balance due for a loan of £1,200."

Held, that the amendment should be allowed, and it appearing from the evidence that the item in question was in fact a balance due for money