

*McKay vs. The Commercial Bank.*—L., residing in St. John, drew bills of exchange on the plaintiff at Liverpool, which he accepted for the accommodation of defendants, who agreed to guarantee the payment of them at maturity; these bills would fall due on the 2nd Sept. 1868. On the 11th August, L. drew other bills on the plaintiff, also for the defendants' accommodation. The plaintiff received L's letter advising the drawing of these bills on the 24th August, and not having at that time received funds from the defendants to take up the bills falling due on the 2nd Sept., telegraphed to L. that unless those funds were sent he would not accept the bills drawn on the 11th. At this time L. had become insolvent, and left the Province, having assigned his property to trustees, for the benefit of his creditors. L's trustees received the plaintiff's telegram, and took it to the cashier of the bank, who knew that L. had absconded, and an answer was sent to the plaintiff, by cable, in the name of L., stating that the funds had been sent by the last mail, which was the fact. In consequence of this answer, the plaintiff accepted the bills drawn on the 11th August, and was obliged to pay them, L. not having shipped to the plaintiff cargoes of lumber, as he had agreed. The telegram sent to the plaintiff was in the handwriting of one of L's trustees, but was sent to the telegraph office by the cashier of the bank, and the cost of transmitting it charged to L. in the bank books. The cashier swore that it was sent by direction of the president of the bank; but he, and also the directors, denied all knowledge of it till several months afterwards, and after the cashier had become a defaulter and absconded.

Held: In an action against the bank for falsely representing by the telegram that L. was in St. John, whereby plaintiff was induced to accept the bills (per Allen & Fisher JJ., Weldon J. *dissentiente*) that the answering the telegram addressed to L. was not within the scope of the cashier's duties, and therefore that it should have been left to the jury to find out whether the answer was sent by the authority of the Directors; and *Quære*, whether the stockholders would be liable even if the Directors had authorised it.

Per Weldon J.: That as the telegram to L., related to the payment of the bills of exchange, in which the bank was interested, the cashier had authority to answer it, and the defendants were liable for his false representation.

*Walker vs. The Mayor of St. John.*—Defendants being the conservators of the harbour of St. John, with power by charter to regulate the navigation, anchoring and fastening of vessels, and to make by-laws, &c., granted to the plaintiff the right to build a wharf extending into the harbour, and to demand and receive the wharfage and emoluments to be derived from vessels lying at such wharf, and all other rights, privileges and appurtenances to the same belonging. The plaintiff built a wharf, and the defendants afterwards made a bye-law that no vessel should lie at this wharf with her bow to the south.