sub-section 4 of section 306 qualifies its main clause and excludes its operation where the injury complained of comes within the jurisdiction of, and is specially dealt with by the laws of, the province in which it takes place, provided such laws do not encroach upon Dominion powers. *C.P.R. Co.* v. *Roy* (1902), A.C. 220, distinguished. *Canada Southern* v. *Jackson,* 17 S.C.R. at 325, followed.

Per CAMERON, J.A.:—Although the definition of the word, "railway" in par. (21) of s. 2 of the Railway Act, would seem to include the icehouse in question, yet that is subject to the qualifying provision "unless the context otherwise requires," at the beginning of s. 2, and the context in s. 306 does otherwise require.

McMurray and *Davidson,* for plaintiff. *Clarke,* K.C., for defendant.

Full Court.] [June 22.

BANK OF BRITISH NORTH AMERICA *v.* MCCOMB.

Bill of exchange and promissory notes—Holder in due course—Bills of Exchange Act—Consideration — Unfair dealing — Setting aside transaction for fraud or illegality—Recovery of money paid under protest.

Held, 1. The mere existence of a liability of a customer to a bank on a promissory note not yet due is not a sufficient consideration, under s. 53 of the Bills of Exchange Act, for the transfer by the customer to the bank of the promissory note of a third party as collateral security so as to constitute the bank the holder in due course of such promissory note or to give the bank a better title to it than the customer had as against the maker, unless there is evidence that such note was transferred pursuant to a previous agreement to give security. *Canadian Bank of Commerce* v. *Waite,* 1 Alta. 68, followed. *Currie* v. *Misa,* L.R. 10 Ex. 153, and *MacLean* v. *Clydesdale Banking Co.,* 9 A.C. 95, distinguished, on the ground that the debts there secured were overdue at the time the collaterals were received.

2. Where a promissory note has been given in respect of an indebtedness incurred, that indebtedness will not furnish a consideration for another simple contract made during the currency of the note, the original consideration having been merged in the note. *Hopkins* v. *Logan,* 5 M. & W. 241; *Roscorla* v. *Thomas,* 3 Q.B. 234, and *Kaye* v. *Dutton,* 7 M. & G. 815, followed.