

Div. Ct.]

REED ET AL. V SMITH.

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recourse made by the plaintiffs after they got the notes back from Thompson was an alteration of the notes, and was made too late. He also, in a written argument handed in since the hearing, objected that the facts proved did not bring the case within the authority of *Moffatt v. Rees*, 15 U. C. R. 527, and *Gunn v. McPherson*, 18 U. C. R. 244.

I will deal with the second and third objections first.

I do not see how the endorsement before suit can be said to alter the legal effect of the notes. It was only carrying out the original intention of the parties, and the case of *Peck et al. v. Phippon*, 9 U. C. R. 73, is an authority that such endorsement might be made even after action brought. I think the evidence shows that the defendant and England endorsed each other's notes as sureties for each other, and were taken as sureties by the plaintiffs. The plaintiffs' counsel applied, after the hearing, to be allowed to furnish additional evidence on this point, but I did not think any doubt existed upon it. This objection only applies to the note endorsed by defendant.

The question of the Statute of Limitations remains to be considered.

The notes having been presented for payment, and notices of dishonour mailed on the day they fell due, this case is brought within the authority of *Sinclair v. Robson*, 16 U. C. R. 211, and I must hold that the plaintiffs' cause of action accrued on that day after this was done, that is, some time in the afternoon of the 27th September, 1876, the result being that if that day is to be reckoned as the first day of the six years of limitation, the six years expired on the 26th September, 1882, and this suit (which was brought on the 27th) was brought too late.

In the recent case of *Edgar v. Magee*, 1 Ont. R. 287, the bill sued on had not been presented for payment on the day it fell due, and on this ground that case was distinguished by Armour, J., from *Sinclair v. Robson*. Cameron, J., held that the six years commenced on the last day of grace, and that the action was brought too late. Hagarty, C. J., held that whether the cause of action accrued on the last day of grace or not, the statute did not begin to run until the following day. He says, "It seems to me that the day on which an event happens giving a cause of

action is not to be reckoned; in other words, that the 2nd December was the first day to be reckoned in the six years of limitation." The bill in that case matured on the 1st December.

The learned Chief Justice refers to several judgments of Parke, B., in support of the view taken by him. Mr. Justice Armour says in his judgment in the same case of *Edgar v. Magee*, that he is not to be understood as holding that even if the holder of a bill or note is enabled by law to put himself in a position to sue on the last day of grace, and does not put himself in that position, the Statute of Limitations will begin to run on that day; and he refers to *Blackman v. Nearing*, 43 Conn. 56, when it was held that the statute did not begin to run until the following day. In Angell on Limitations (6 Edn.) chap. 6, the question whether the day on which a cause of action accrues is to be included or excluded in the computation of the period of limitation, is considered at length, and a number of the older decisions, in which the first day was included, are referred to. Extracts are given from the judgment in *Lester v. Garland*, 15 Vesey, 248, in which case the Master of the Rolls, although not laying down any general rule, says: "Upon technical reasoning I rather think it would be more easy to maintain that the day of an act done or an event happening ought in all cases to be excluded rather than that it should in all cases be included. Our law rejects fractions of a day more generally than the civil law does. The effect is to render the day a sort of individual point, so that any act done in the compass of it is no more referable to any one than to any other portion of it, and therefore the act cannot properly be said to be passed until the day is passed." In this case the Master of the Rolls excluded the first day, but he seems to have distinguished the earlier cases which he reviews rather than to have over-ruled them, and to have observed that the act done from which the computation is made *inclusive of the day is an act to which the party against whom the time runs is privy*; and it is remarked in Mr. Angell's book, that as he unquestionably has the benefit of some portion of the day there is less hardship in constructively reckoning the whole of it as a part of the time to be allowed him.

In the cases of *Pellew v. Hundred of Wonford*, 9 B. & C. 134, and *Harly v. Ryles*, 1b. 603, the day was excluded, and in both cases the sugges-