that, moreover, the transfer dealt with so much of the contract as was supposed then to exist, that is, as showing a balance in favour of the transferror, but that the very entry in schedule "A" shows that the transaction was to be charged with the draft. Second: That by the acts of the defendant he had so mixed himself up in the transaction that he rendered himself personally liable, and had thereby admitted his responsibility to be that of the original debtor, McMullin.

The appellant, by his pleas, said: 1st—That there was no privity of contract between the appellant and the respondents; 2nd—That the appellant could not be responsible beyond his deed by which he agreed to pay certain specified liabilities; 3rd—That he had a right to take part in the settlement of the transaction with Pupin, inasmuch as he had an interest in the balance, and that his interference went no further than enquiring as to what was being done, and that he had made no promise and assumed no responsibility whatever.

I am not sure whether the law of England as to "privity of contract" is the same as ours; at all events, we have not the advantage of having so compendious a technicality. "*Défaut de lien*" to some extent expresses the idea, but I am inclined to think that we should not hold there was *défaut de lien* in all cases in which it would be held in England that there was want of privity of contract. Be this as it may, by our law "right of action" is coextensive with interest, and consequently we give the immediate action against a third party, if such third party is directly liable to our debtor. Thus a useless *circuit d'actions* is avoided. I think, therefore, that if this transaction be one for which Hood was liable to McMullin, the Bank of Toronto, directly interested in it, can exercise the right of its debtor, McMullin, as against Hood.

It seems to me that the definition of this right aids us in narrowing down the question on the merits, at least from one point of view. If the Bank has a right to sue Hood, it is only because McMullin would have such right. The first question then to be determined, is whether the deed of transfer, as it stands, with its schedules, created an undertaking on the part of Hood to protect McMullin from all that might arise out of the contract with Pupin. If not, I do not see how Hood can be liable for the debt to the Bank. By the terms of the deed already quoted it seems that the whole contract with Pupin was specially included, but it is to be observed that if the schedules, and specially the schedule A, are to be considered as part of the deed, and are to be read as qualifying its terms, it is quite plain that schedule A in the item

"P. Pupin 50,448 kilos boiled beef $16,143.36
Less amount of draft 13,943.30

$2,200.06"

settled that portion of the Pupin contract between Hood and McMullin, and was a warranty to Hood that, so far as that contract had been carried out, the result would be a profit to Hood of $2,200.06. I cannot well see how this schedule can be considered in any other light than as a limitation of the extent to which this particular contract was adopted. To say that it is a totality Hood bought, and that therefore he was liable, is simply to ignore the warranty of the schedule, or to attach to it some other significance. But as to that the contract must speak for itself; it is the law of the parties, and no one can have any right to make it other than they have willed. It seems to me to say, that McMullin sold to Hood all his "existing contracts," but that one had been partly executed and that the known result was a profit. Hood cannot be bound inferentially to what he never could have contemplated, and it can hardly be supposed that he contemplated changing this profit of $2,000 into a loss of $16,000.

With regard to the second point, I don't think there is anything to show that by any subsequent act of his Hood rendered himself liable. Great stress is laid on a letter from appellant of the 19th April. It appears to me that if Hood is not liable under the deed of transfer, his position cannot be altered by his waiving in the name of the Packing Company all objection to the respondents adopting the course they suggest as most beneficial. If it was Mr. Hood the Bank wished to consent, they should have addressed him and not the Packing Company. By addressing the Packing Company, the Bank evidently was seeking to obtain the Company's consent to the delivery