

no claim, at the time, that the proceeds should in part be applied upon the notes, cannot be heard now to charge the plaintiffs with the loss of the sulphite or with its proceeds. He himself authorised the arrangement by which the company obtained the advances to the full extent of its value. . . .

It was urged upon the argument that Mr. Jones, who subsequently became the local manager of the plaintiffs' bank at Sturgeon Falls, by his affidavit of the 14th February, 1907, in another action, made claim to this sulphite on the part of the plaintiffs. The clause referred to is as follows: "4. That at the date of the said agreement, that is, the agreement last referred to, there was in the said mill and in and about the premises a large stock of paper, ground wood, and sulphite, the product of wood, upon which the above-named Quebec Bank hold securities under sec. 74 of the Bank Act." . . . I do not think, however, that this statement by Mr. Jones affects the plaintiffs' position. Having regard to the facts of the case, as now known, I think the fair reading of the clause is, that the paper, which was made up of ground wood and sulphite, was the product of wood upon which the plaintiffs held securities under sec. 74 of the Bank Act. This was perfectly true, but it was made long after the defendant, in the view I take of the case, had lost any right to claim the proceeds of such paper by authorising the assignment of the accounts to obtain advances.

There is a further view, arising out of the facts of the case, that also, in my opinion, precludes the defendant's success. The plaintiffs in fact did not sell the paper or receive the money on such sale. The various transactions were carried through by the company. Payments were made to the company, and then the amount of the accounts which had been assigned by the company to the plaintiffs was paid out of the money so received. In other words, the plaintiffs have never received any part of the proceeds of the paper on account of or by means of the warehouse receipts.

In my opinion, the defendant is estopped from making claim now to the proceeds of the sulphite which he himself directed in another channel, by which it was lost to the plaintiffs.

I agree in the conclusion arrived at by the trial Judge, and think the appeal should be dismissed with costs.

SUTHERLAND and LENNOX, JJ., concurred—the latter giving reasons in writing.

Appeal dismissed.