

FIRST DIVISIONAL COURT.

FEBRUARY 7TH, 1917.

***BANK OF BRITISH NORTH AMERICA v. STANDARD BANK OF CANADA.**

Banks and Banking—Obligation of Bank on which Cheque Drawn by Customer to Bank Holding Cheque—Effect of Clearing House Transaction—Rules of Clearing House—Agency of one Bank for the other—Consideration—Contract—Breach—Damages.

Appeal by the defendants from the judgment of MIDDLETON, J., 34 O.L.R. 648, 9 O.W.N. 216.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

Wallace Nesbitt, K.C., for the appellants.

W. N. Tilley, K.C., and G. L. Smith, for the plaintiffs, respondents.

The judgment of the Court was read by MACLAREN, J.A., who, after stating the facts, said that counsel for the defendants relied upon rule 2 of the rules and regulations respecting clearing houses, contained in by-law 16 of the Canadian Bankers' Association, incorporated by 63 & 64 Vict. ch. 93. The by-law was approved by the Treasury Board in May, 1901; both banks were members of the association, and were bound by the by-law. But rule 2 was intended simply to place the parties on the same footing as though they had dealt with each other directly, and not through the clearing house. The plaintiffs here were in no wise attempting to use the clearing house as a means of obtaining payment of a disputed claim; and there was nothing in the rule which militated against the claim of the plaintiffs. By the express terms of the rule, the rights of the parties were to be the same as they would have been if the exchanges of the cheques and other commercial paper had been made between them directly and without the intervention of a clearing house or any of its officers, and were to be determined by the law applicable to such a transaction, including the law merchant.

So far as the cheques now in question were concerned, there was an undertaking or agreement by the defendants to collect them for the plaintiffs by duly presenting the cheques to themselves (the defendants) and paying them if there were unappropriated funds to meet them while they remained in their possession. The agreement of the plaintiffs to perform a like service