

to be given to the protest may be disregarded, if it be thought that the protest was not proved) after presentment, and notice sent; that it was presented the day it was due, and that notice was duly sent. This is the evidence of the holder of the note, the plaintiff, and from this it certainly ought to be inferred by any Judge, in the absence of any weakening of the statement by cross-examination, that the presentment was on the day the note became due, and that payment was refused. But it is contended that no one can tell what notice was sent or to whom. This is very like a special demurrer to the evidence, an attempt to pick holes in common phraseology, of which every one understands the meaning, language used by the holder of the note in testifying upon the issues joined in the action. The appellant was represented by counsel at the trial, and if she chose to leave the matter as plaintiff stated, it must be assumed that she could not have bettered her case or weakened his by cross-examination, and therefore that he was testifying that notice of dishonour of the note sued on was sent as required by law . . . I do not think it necessary to rely on the protest. It must be considered too, in dealing with the question of leave to appeal, that there is every reason to suppose that the objections are merely technical, and that the court would on the hearing of the appeal allow any defect to be supplemented by further evidence.

Motion refused with costs.

Murphy, Sale, & O'Connor, Windsor, solicitors for plaintiff.

Fleming, Wigle, & Rodd, Windsor, solicitors for defendant S. A. C. White.

OSLER, J.A.

FEBRUARY 12TH, 1902.

C. A.—CHAMBERS.

CITY OF HAMILTON v. KRAMER-IRWIN ROCK  
ASPHALT, ETC., CO.

*Appeal Book—Contents—Action for Breach of Contract for Repair, etc., of Streets—Finding on Proper Construction of Contract—Appeal as to—Evidence on Various Issues—Inclusion of, in Appeal Book.*

A motion by consent for direction as to the contents of the appeal book.

A. B. Aylesworth, K.C., for plaintiffs.

W. R. Riddell, K.C., for defendants.