gone: *Mors-le-Blanch* v. *Wilson*, L.R. 8 C.P.D., 227.

No obligation to pay the freight arises in point of law from the receipt of the goods, under the bill of lading, but such receipt by the endorsee of the bill of lading is reasonable evidence, from which a jury may infer a contract to pay it, the consideration for the contract being that the captain has given up his lien on the cargo, *Muller* v. *Young*, (in error), 25 L.J., Q.B., 94-96.

"Whether the ship-owner and his agent, the master, in cases where they are obliged to tranship the goods into another vessel, can at same time transfer the lien, which they would have had for freight had they conveyed the goods to their destination is not decided."—Kay 326.

The reading of the cases leads to the conclusion that it never has been considered that the common law right had been extended. The Vice-Admiralty Act (Imp.) 26 Vict., c. 24, sec. 10, defines the matter in which the Courts shall have jurisdiction, but does not include the case of freight.

The petitioner referred to General Rule 26 of the Admiralty Court of Ontario. I think the purpose and effect of this rule, when read with rule 74 is quite clear. They apply to cases where the freight carried, alone or with the cargo, is liable. "The cargo may not only be arrested, *eo nomine*, but also in respect of freight which is due to the owner of the ship which has carried it. For if freight has been earned, the cargo is held to represent it so long as it remains unpaid by its consignors; and the same remark applies to what is analogous to freight, viz.: where the cargo belongs to the owner of the ship, and there will be a profit realized on its sale."—Coote's Admiralty Practice, page 29.

*Demurrer allowed with costs.*

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## DIVISION COURT—COUNTY OF LINCOLN.

### REED ET AL. V. SMITH.

*Promissory note—Statute of Limitations—*

Action by plaintiffs, payees of two promissory notes dated 24th November, 1875, payable ten months after date, one made by the defendant and endorsed by E.; and the other made by E. and endorsed by defendant. Both notes were duly protested for non payment on the third day of grace (27th September, 1876,) and notice of dishonour marked on that day.

*Held*, that an action brought on 27th September, 1881, was not barred by the Statute of Limitations.

[St. Catharines, Dec. 12.—SENKLER, Co. J

The facts and authorities are fully set out in the judgment.

*Pattison* for the plaintiff.

*Miller*, Q. C., for the defendant.

SENKLER, Co. J.--The plaintiffs bring this action to recover the sum of $200, part of the amount of two promissory notes, both dated 24th November, 1875, payable ten months after date to the plaintiffs or order, at the Quebec Bank, St. Catharines, with interest at six per cent.; one being for $102.25, made by the defendant and endorsed by the plaintiffs in their individual names "without recourse," by Albert England and then by the plaintiffs again; the other being for $121.50, made by Albert England and endorsed by the plaintiffs (in the same manner as the other), by the defendant and then by the plaintiffs again. The plaintiffs, by their statement of claim, abandon any excess above $200.

It appears from the evidence of the plaintiff Reed that on the 24th November, 1875, the plaintiffs had a sale. Defendant bought at it, and gave the note made by himself for the goods purchased by him. England endorsed this note as surety. England also bought goods, and gave the other note for the price, which note defendant endorsed as surety. The plaintiff sold the notes to one Thompson, who held them until they were within a few days of being barred by the statute. Plaintiffs then took them up. I presume that plaintiffs wrote the endorsement of their names below the name of defendant (or England) on the notes before they gave them to Thompson, as the protests attached to the notes show that notice of dishonor was sent to them. The endorsements without recourse were, however, made after the notes were handed to plaintiffs' solicitors for suit. The protests shew that the notes were duly presented at the Quebec Bank, St. Catharines, for payment on the day they became due (27th September, 1876), and that notices of dishonor were mailed on the same day. This action was commenced on the 27th September, 1882.

The defendant's counsel objected that the plaintiffs' claim was barred by the Statute of Limitations, and that the endorsement without