

purchased from defendant R. an organ for \$120, payable in 26 monthly instalments of \$5 each, a lien receipt being signed by the son, stating that the property was to remain in R. until all the instalments were paid, and authorizing R. in case of default of payment of said instalments to resume possession of the organ, which the son agreed to deliver up to R. when required, R. and his agents and assigns to have full right and liberty to enter any house or premises which the organ might be in and remove same without resorting to any legal process. The organ was sent to the plaintiff's house with whom the son was living, and remained there until the 30th November, when, no instalments having been paid, said R. sent the other defendant, his bookkeeper, and two assistants, to plaintiff's house, with instructions to go and get the organ. The bookkeeper, taking the lien receipt as his authority, went to plaintiff's house, opened the house door and entered the hall, but on his attempting to open the door of the room where the organ was, the plaintiff's wife (the plaintiff and the son being absent) resisted his entrance, when a scuffle ensued and the plaintiff's wife was injured.

Held, that R. was responsible for the acts of his servant, the bookkeeper, for they were done by him in the discharge of what he believed to be his duty and were within the general scope of his authority.

Held, also, that the judgment against both R. and the bookkeeper was maintainable, for it was recovered against them as joint wrongdoers.

J. Macgregor, for plaintiff.

Bigelcw, for defendant.

Divisional Court.]

SHERWOOD v. CLINE.

County Court—Claim within jurisdiction of—Prohibition.

Where in an action in the County Court, judgment is given for a sum in itself within the jurisdiction of the Court, but which is the balance of a sum beyond the jurisdiction and which was arrived at, not by any settlement or statement of account between the parties, but on the ascertainment of a disputed account.

Held, this was the allowance of a claim beyond the jurisdiction of the Court, and a writ of prohibition was granted.

H. H. Strathy, for plaintiff.

ROSE, J.]

WILBERFORCE EDUCATIONAL INSTITUTE v. HOLDEN.

Corporation—Trustee, removal of—Dealing with trust funds—Necessity of making Atty.-Genl. a party.

In an action by a corporation for the removal of one of the trustees, who also acted as secretary, for alleged improper dealing with the corporate funds, judgment was given but without any finding of wilful misconduct, directing such trustee's removal, on the ground that so much doubt was cast upon his dealings with the trusts funds that it would not be proper to allow him to remain a member of the Board.

The action is maintainable without making the Attorney-General a party.

Moss, Q.C. and Craddock, for plaintiff.

MacLaren, for defendant.

Divisional Court.]

BOYD v. NASMITH.

Cheque—Marking good by bank—Effect of—Discharge of drawer.

The payees of a cheque drawn on the Central Bank took it between two and three o'clock of the day on which it was drawn, to the bank, and at the payee's request the cheque was marked good, the bank, in accordance with their custom, charging the amount of the cheque to the drawer's account. The payees, a few minutes before three o'clock, took the cheque and offered it as part of a deposit at another bank, but it was refused, and on the same day, about five o'clock, the Central Bank suspended payment. On the following day the payees presented the cheque at the Central Bank, but on account of the bank having suspended, payment was refused.

Held, that the drawers of the cheque were discharged from all liability thereon.

Mowat, Q. C., Attorney-General, for plff.

MacLaren, contra.