

Association in making the final payment on the loan issued a cheque for an amount \$1,400 in excess of the balance of the mortgage, which was sent to the bank as usual. It appeared from the evidence that the bank's manager suspected at the time of the receipt of the final cheque, that the Confederation Life Association was making an overpayment, and it seems that the bank did not permit its position towards its customers, Bell Bros., to be altered in any way by reason of this overpayment.

The Court gave judgment for the plaintiffs on the ground that the bank was in no better position than Bell Bros., who had no claim for the money on the Confederation Life.

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SUPREME COURT, NOVA SCOTIA

People's Bank of Halifax v. Wharton et al.\*

The parties to a note which has been renewed may usually be sued where, for any reason not the fault of the holder, the renewal note cannot be recovered upon.

This was an action on a note for \$297, made 18th December, 1891, by John Wharton and William Butler to Alexander Nelson, and endorsed by him to the plaintiffs, given in renewal of a note dated 16th September, 1891, also declared upon, for \$397, made by Joseph Wharton, and endorsed by Alexander Nelson and William Butler. The defence was that the note of 18th December, 1891, was altered after signature by Wharton and Butler, by the interlineation of the words "jointly and severally," which was supposed to have been done by Alexander Nelson, who took it to the bank.

The Court held that because of the material alteration the plaintiffs could not recover on the renewal note, but that they could recover on the old note. The Court took the view that in negotiating for a renewal of the old note with the bank Alexander Nelson had acted as the agent of the other parties to it, and that the terms on which the bank must be understood to have consented to it were that the parties were to deliver to the bank for the purpose of such renewal a valid note to which they should be parties. Having failed to carry out this implied agreement, their liability on the old note continued to exist.

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\*From the fuller report in the NOVA SCOTIA REPORTS.