

made, at Sarnia, an assignment for the benefit of his creditors, and on the 13th absconded. The banking business was carried on as usual on the 12th and 13th, and it was shown that not until the doors of the bank were closed on the 14th, had the defendants any idea that he was in pecuniary difficulties. Conn's assignee gave the draft to the defendants with other vouchers.

On the 8th of March, 1893, the plaintiffs brought this action, claiming both on the original consideration and on the draft, and the defendants pleaded payment and alleged that the plaintiffs were not holders of the draft.

The action was tried on the 14th of December, 1893, before His Honour Judge Morgan, who gave judgment in favor of the plaintiffs, and the defendants' appeal from this judgment was argued before Hagarty, C.J.O., Burton, Osler, and Maclellan, J.J.A., on the 30th of May, 1894, who gave judgment as follows, dismissing the appeal with costs:

*Hagarty, C.J.O.*:—In my view this appeal fails on the short ground that what took place between Conn & Co. and the defendants, was not a payment of the draft as against the plaintiffs or the Canadian Bank of Commerce. Conn & Co.'s duty was to obtain payment in money, and their adjustment of their own account with the defendants was not within the scope of their agency so as to bind their principals.

*Burton, J.A.*:—The case must be looked at in the same way as if the Canadian Bank of Commerce were suing, and the fallacy is in treating this debit as payment of money. Conn & Co., it may be, were debtors to the defendants, but that would not justify them in setting off that debt. Their authority as agents was limited to receiving payment in cash and nothing else.

*Osler, J.A.*:—It is clear that sufficient funds were not specifically paid to Conn & Co. by the defendants for the purpose of meeting the draft. The Givens' note, even assuming that it can be taken into consideration, was not discounted with that view, and the other deposits that were afterwards made were paid in generally and without appropriation, so that the case comes down to a mere setting off of contra-accounts, and this Conn & Co. could not do.

*Maclellan, J.A.*:—Conn & Co., though bankers, were governed by the ordinary rules applicable to agents, and could receive payment in cash only and not by set-off or mere matter of book-keeping; and no money having been received by them, the draft was improperly given up to the defendants, who are still liable upon it.