

the issues were properly presented upon the pleadings, and in directing that the costs of the postponement should be borne by them.

No opinion expressed as to whether a Divisional Court had power to review such a ruling.

*DuVernet* for the plaintiffs.

*Shepley*, Q.C., for the defendant Bostwick.

### MANITOBA.

#### COURT OF QUEEN'S BENCH.

DUBUC, J.]

[March 10.

THE COMMERCIAL BANK OF MANITOBA v. ALLAN.

*Bills of Exchange Act—Presentment of demand note—Notice of dishonour by service of writ—Discharge of indorser.*

This action was brought to recover the amount of several promissory notes. The fourth count was on a note dated 1st November, 1890, made by D. McArthur to the order of defendant, and endorsed by the latter, payable on demand at the Commercial Bank of Manitoba, Winnipeg. The note was presented for payment on 14th October, 1893, the day of the issue of the writ of summons in this cause. Defendant claimed that he had no notice of dishonour, while it was contended on behalf of the plaintiffs that service of the writ of summons with particulars attached was sufficient notice. Bills of Exchange Act, 1890, c. 33, s. 49, s-s. (e).

*Held*, that the writ, with particulars attached, was a sufficient notice of dishonour, as a notice. *Boulton v. Welsh*, 3 Bing. N. C. 688; *Grugeon v. Smith*, 6 A. & E. 499; *Hedger v. Steavenson*, 2. M. & W. 799; and *Paul v. Joel*, 4 H. & N. 354, followed.

A further question raised was whether the notice was given too late or not, and whether it should have reached the defendant before action brought. Bills of Exchange Act, s. 49, s-s. 4 and s-s. 5.

*Held*, that as the defendant received notice of dishonour by the service of the writ on him within an hour or two after presentment of the note for payment, he could not be said to have been prejudiced by delay or otherwise, and in the absence of any authority to the contrary, and in view of the provisions of the statute, which provisions seem to consider the notice of dishonour, in some circumstances at least, as a mere formality, without much importance as to the fact that it may or may not reach the party to whom the notice is to be sent, the defendant must be held to have had sufficient notice of dishonour. The plaintiffs were therefore entitled to recover on the note in question.

A second note, dated 1st November, 1890, commenced thus: "On demand months after date I promise to pay," etc. The note was on a printed form, the words "On demand" and "I" were written, while the other words, "months after date" and "promise to pay," were printed. The note was made "with interest at 10 per cent., payable half yearly on 30th April and 30th October." Defendant contended that the note was not negotiable, because of the uncertainty of the date of payment: *Mahoney v. Fitzpatrick*, 133 Mass. 151. It was presented