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DECISIONS IN COMMERCIAL LAW.

THE COMMERCIAL BANK OF MANITOBA v. ALLAN.—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 the defendant, and endorsed by the latter, payable on demand at the Commercial Bank of Manitoba, Winnipeg. The note was presented for payment on October 14th, 1893, the day of the issue of the writ of summons in this cause. Defendant claimed that he had no notice of dishonor, 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. Held by the Court of Queen's Bench of Manitoba that the writ with particulars attached was a sufficient notice of dishonor, as a notice. Held further, that as the defendant received notice of dishonor 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 dishonor, in some circumstances at least, as a mere formality, without much importance as to the fact 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 dishonor. The plaintiffs therefore were 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," &c. 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 the 30th of April and 30th October." Defendant contended that the note was not negotiable, because of the uncertainty of the date of payment. It was presented for payment and protested on 5th July, 1893. Defendant contended that the note was not presented for payment within a reasonable time, as required by the Bills of Exchange Act, and that, as endorsee, he was therefore discharged. Held, that the note was clearly a note payable on demand some months after date, viz., two months at least after date. The fact that the interest was payable half yearly clearly indicated that the parties contemplated and intended that the note was to remain unpaid for a considerable time, and that it might not be paid for years. Such being the intention of the parties as indicated on the face of the note, it would not be said that the presentment was made at such an unreasonable time after the endorsements as to operate as a discharge of the defendant's liability on the note.

ROGERS v. DEVITT.—A chattel mortgage was made to the plaintiff by a firm of traders, covering wood then on certain premises, and thereafter to be bought thereon. Subsequently the mortgagors made two contracts with the defendant, by which he was to get out wood for them and place it upon the premises at a specified rate, fifty per cent. of which was to be paid every month on all wood got out during that month, and the balance in cash upon and according to a measurement to be made by the mortgagors before a specified time. The defendant got out and delivered a quantity of wood upon the premises, and, before the time specified, a measurement was made by himself and the respective agents of the plaintiffs and the mortgagors, and the wood measured was then marked with the plaintiff's mark. On the following day he wrote to the mortgagors asking payment of the balance due him in accordance with the measurement. The mortgagors, three weeks later, made an assignment for the benefit of creditors, and, just before they did so, gave the defendant a written acknowledgment of a debt due him on account of the wood, "which it is agreed and understood he is to hold the wood measured by us until it is paid for." Subsequently the defendant took away portions of the wood so marked and measured, and the plaintiffs brought this action, alleging a wrongful seizure and conversion of the wood, and claiming the value of it. Held by the Court of Queen's Bench that there was an appropriation to the contracts, by the assent of the defendant and mortgagors, of the wood measured and marked the property in which thereupon became vested in the mortgagors, and through them in the plaintiffs; but the vesting of the property did not vest the right of possession without payment of the price, and therefore the plaintiffs could not maintain trespass or trover for the wood taken, but were entitled, upon amendment of the pleadings, to a decree declaring them entitled to the property in the wood, and to possession upon payment of the amount due to the defendant, and to make him account for so much of the wood as was not received by them.

JOHNSTON v. GRAND TRUNK RAILWAY CO.—In an action to recover damages for the death of the plaintiff's husband, who was killed at a railway crossing by a train of the defendants, the jury found that the engine bell was not rung on approaching the highway, nor kept ringing until the engine crossed it; that the deceased did not see the train approaching in time to avoid it, and that he had no warning of its approach, and assessed damages at $1,000. Held by the Court of Queen's Bench that the plaintiff was entitled to judgment upon these findings, notwithstanding that the jury, to a question whether the deceased, if he saw the train approaching, used proper care to avoid it, answered, "We don't know."

TRIMBLE v. LANKTREE.—The Statute of Frauds, requiring contracts not to be performed within one year to be in writing, does not apply to a contract which has been entirely executed on one side within the year from the making, so as to prevent an action being brought for the non-performance on the other side. And therefore where the plaintiff delivered sheep to the defendant within the year from the making of a verbal contract with the defendant, under which the defendant was to deliver double the number to the plaintiff at the expiration of three years, it was held by the Court of Queen's Bench that the contract was not within the statute.

BALL v. TENNANT.—An assignment under the Act for the general benefit of creditors, made by the members of a trading partnership in the words mentioned in the Act, vests in the assignee all the properties of each of the partners, several as well as joint, including a covenant to indemnify one of the partners against a mortgage, which covenant vests under the term "property." Where such an assignment has been acted upon by the creditors, the Court of Queen's Bench decides that it is not open to the objection, even if made by an execution creditor, that no creditor executed it.