

recover the amount of a draft for \$115.50 upon the Farmers Bank of Canada, in favour of the defendant, and indorsed by her to the plaintiffs. The plaintiffs paid the amount to the defendant; but, owing to the Farmers Bank of Canada stopping payment, the draft was not honoured when presented for payment through the Toronto clearing-house.

The appeal was heard by Boyd, C., LATCHFORD and MIDDLETON, JJ.

Casey Wood, for the plaintiffs.

B. F. Justin, K.C., for the defendant.

The judgment of the Court was delivered by BOYD, C.:— I think the judgment should not be disturbed. Treating this as an isolated transaction, the defendant is not in any way to blame. She sells the draft from the Farmers Bank and indorses it to the plaintiffs at Alton in order to receive its value. She knows nothing more of the transaction, and funds were then in the Farmers Bank available for its payment: but the plaintiffs failed to collect the amount from the Farmers Bank because of their failure to pay on the 19th December. She received the money on the 16th December, and the draft was forwarded to the Toronto office of the Sterling Bank on the same day, and was received at 8.30 a.m. on the morning of the 17th, too late to be sent to the clearing-house that day, which was Saturday. It went through the clearing-house at 10 a.m. on Monday, and was received by the Farmers Bank and stamped as their property on the 19th. This indicated a change in the relations of the two banks, which, I think, may be properly considered as exonerating the defendant from any liability to refund the money to the Sterling Bank. There is no evidence given that she is or was aware of or is to be bound by the dealings sanctioned as between the banks by their voluntary association in the clearing-house system. That is a matter not binding per se on the public unless it can be assumed or proved that the party sought to be charged has been dealing with the bank subject to the usages of the clearing-house. No such evidence was given in this case, and the inference to be drawn from what was in evidence was, that the Farmers Bank had become debtor to the plaintiffs for this instrument.

Appeal dismissed with costs.