

good, which I find was accepted by the Standard Bank in lieu of money on the 16th. This possession was further confirmed and acted upon on the 17th, when the adjustments were made and the balance struck and the draft on Toronto accepted instead of payment direct.

At the close of the case, I was strongly of opinion that the plaintiff was entitled to judgment for the amount of his claim, but reserved judgment to enable me further to examine the cases cited by counsel.

Boyd v. Nasmith, 17 O.R. 40, seems directly in point. . . .

[Quotations from the report of that case.]

This seems to be the first case of the kind in the English or Canadian reports. . . .

[Reference also to First National Bank of Jersey City v. Leach, 52 N.Y. 350, 353; Brown v. Leckie, 43 Ill. 497.]

If it could be argued that the cheque was not in fact presented for payment until Monday, it would not have been presented, in my judgment, within a reasonable time, and the drawer, as between him and the bank, would be entitled to damages caused him by the delay, which in the present case would appear to be the amount of the deposit. See Bills of Exchange Act, R.S.C. 1906 ch. 119, sec. 166.

As to the effect of the act of the ledger-keeper in charging up the cheque in the Farmers Bank to the Standard Bank, giving credit to the plaintiff in their ledger, and entering the amount in his pass-book, see *Nightingale v. City Bank of Montreal*, 26 C.P. 74.

Mr. McLaughlin referred to *Gaden v. Newfoundland Savings Bank*, [1899] A.C. 281; *The Queen v. Bank of Montreal*, 1 Ex. C.R. 154; *Capital and Counties Bank v. Gordon*, [1903] A.C. 240; *Farmers Bank v. Newland*, 31 S.W. Repr. 38; *Morse on Banking*, 4th ed., sec. 220; *Giles v. Perkins*, 9 East 12.

On examination of these cases it appears to me that the decision in each case is on facts wholly different from the present case, and I find nothing in any of these decisions to modify the law as laid down in *Boyd v. Nasmith*.

There was a further defence raised on the pleadings. It appears that on the Tuesday following the suspension of the Farmers Bank the defendants procured an instrument to be signed by the plaintiff, not under seal, purporting to release and discharge the defendants from any liability to the plaintiff and to restore the parties to the position that they were in prior to the transfer of the deposit from the Farmers Bank to that of the defendants. The circumstances under which this document was