

Ct. Ap.]

NOTES OF CANADIAN CASES.

[Ct. Ap.]

People's Bank in good faith and in due course of business.

Appeal dismissed without costs.

Macmaster, Q.C., for appellants.

Geoffrion, Q.C., for respondents.

GILLESPIE V. STEPHENS.

Reddition de comptes—Settlement by mandator with his mandatory without vouchers, effect of—*Action en redressement de compte*.

Held, affirming the judgment of the court below, that if a mandator and a mandatory, labouring under no legal disability, come to an amicable settlement about the rendering of an account due by the mandatory without vouchers or any formality whatsoever, such a rendering of account is perfectly legal; and that if subsequently the mandator discovers any errors or omissions in the account his recourse against his mandatory is by an action *en redressement de compte*, and not by an action asking for another complete account.

Appeal dismissed with costs.

Fleming, Q.C., and Nicolls, for appellant.

Carter, for respondent.

COURT OF APPEAL.

C. C. Oxford.]

[September 29.]

MURRAY V. HUTCHINSON.

Waiver of breach of contract.

The statement of claim alleged that the plaintiff purchased from the defendant some cattle, on the terms that the defendant should keep them on his premises until they should be in a condition fit to export; that the plaintiff paid the defendant \$200 on account of the purchase; that the plaintiff afterwards demanded a delivery of the cattle, which the defendant wholly refused; and in breach of his contract sold and delivered the cattle to another person; and the plaintiff claimed to recover back the \$200 deposit, which he had demanded before action, but which had been refused.

The defendant's version of the bargain

was that the plaintiff was to pay the balance of the price and remove the cattle from the defendant's premises by a date certain, but that he failed to do so, and the defendant was obliged, after the date certain had passed, to sell the cattle at a much lower price; and he counter-claimed for damages in excess of the \$200 in his own hands.

The jury found a verdict for the plaintiff for the \$200 upon conflicting testimony.

Held, upon the evidence, that there was no ground for interfering with the findings of the jury; and that the plaintiff could waive the breach of contract, and, assenting to the improper disposition of the cattle, merely require the defendant to repay to him the money paid on account.

Aylesworth, for respondent.

Holman, for appellant.

C. C. Middlesex.]

[September 29.]

GRAHAM V. O'CALLAGHAN.

RUSSELL V. O'CALLAGHAN.

Replevin—Damages can be recovered for eloynd goods.

In an action of replevin, where the sheriff has been unable to replevy the articles mentioned in the writ by reason of their having been lost or eloynd by the defendant, the plaintiff may recover the value of the goods as damages where the count is in the detinet as well as the detinent.

Special damages are recoverable for the trespass to the goods actually replevied, and the plaintiff is not confined to nominal damages, usually given for the costs of the replevin bond.

Moss, Q.C., for appellant.

R. M. Meredith, contra.