

*Held*, also, that the provision in the contract excluding a waiver would apply in this case.

*Fullerton*, for plaintiffs. *E. B. Fisher* and *Eakins*, for defendants.

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Robson, J.] BANK OF MONTREAL *v.* TUDHOPE. [March 3.

*Bank Act, R.S.C. 1906—Sale of goods by pledgor in ordinary course of business—Assignment of chose in action—Set-off.*

*Held*, 1. Goods purchased from the wholesale manufacturer thereof in the ordinary course of business without notice that he has given security thereon to a bank under ss. 86 to 88 of the *Bank Act, R.S.C. 1906, c. 29*, will become the property of the purchaser free from any claim of the bank under such security. *National Mercantile Bank v. Hampson*, 5 Q.B.D. 177, followed.

2. The defendants were entitled to set off their claim for goods sold to the Sylvester Company as against the claim of the plaintiffs upon an assignment to them by the Sylvester Company of their claim for goods sold to the defendants to the extent of such set-off as it stood at the time of receiving notice of the assignment, since there was clear evidence of an agreement that there should be such a set-off.

*Sifton v. Coldwell*, 11 M.R. 653, *Story*, ss. 1434, 1435, and *Lundy v. McCulla*, 11 Gr. 368, followed. *Watson v. Midwales Ry. Co.*, 36 L.J.C.P. 285, distinguished.

*Kilgour*, for plaintiff. *Dennistoun*, K.C., and *Stacpoole*, for defendants.

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Prendergast, J.]

[March 22.

IN RE WOOD AND CITY OF WINNIPEG.

*Municipal law—By-law—Motion to quash for unreasonableness and discrimination—Prohibition as to erection of buildings within fixed distance from street line in residential locality—Removal of prohibition in favour of individual owner—Status of applicant—Acquiescence—Winnipeg charter.*

Under par. 29 of s. 703 of the Winnipeg charter, the city passed a by-law prohibiting the erection of buildings on River Avenue, a residential street, within 15 feet of the street line. Subsequently a by-law was passed in amendment of the former law and permitting one Millman to erect a building on the