

2. A testator appointed A. and the testator's "friend" B. executors of his will, and gave each a legacy of £100 "as a remembrance." B. never acted as executor. Held, that B. was entitled to the legacy without proving the will. —*Bubb v. Yelverton*, L. R. 13 Eq. 131.

CANADA REPORTS.

ONTARIO.

COMMON PLEAS.

PALMER V. MCLENNAN.

Account stated—Evidence of—Promissory Note—Stamps.

Held, that an instrument in this form, "Good to Mr. Palmer for \$850 on demand," was not a promissory note, and so requiring a stamp, but that (Gwynne, J. dissenting), in the absence of any explanation of the circumstances under which it was given, it was *prima facie* evidence to go to a jury of an account stated.

[22 C. P., 257.]

This was an action against the defendants, as executors of Duncan McLennan, executor of Donald Campbell. The declaration was for money payable to defendants, as executors to plaintiff; for money lent by plaintiff to Donald Campbell; money paid; money received by D. Campbell, for plaintiff; interest; and for money found to be due from D. Campbell to plaintiff, on accounts stated between them.

Pleas, never indebted, payment by D. Campbell, and payment by D. McLennan.

The case was tried at Ottawa, before A. Richards, Q. C., sitting for the Chief Justice.

The plaintiff produced the following document, admitted, to be signed by Donald Campbell:

"Good to Mr. Palmer, for eight hundred and fifty dollars, on demand. 10th November, 1866. D. CAMPBELL."

No other evidence was offered.

For defendant it was objected that this document was a promissory note, and required a stamp: 2. That there was no evidence of an account stated, or of any previous dealing between the parties: 3. That it was not an account stated between plaintiff and defendants, there being no privity between them.

A verdict was entered for plaintiff, with leave to defendants to move to enter a nonsuit.

In Michaelmas term last *Harrison*, Q. C., obtained a rule on the leave reserved, to which S. Richards, Q. C., showed cause, citing *Horne v. Reifearn*, 4 B. N. C. 433; *Schree v. Tripp*, 15 M. & W. 23; *Tyke v. Cosford*, 14 C. P. 64.

Harrison, Q. C., contra, cited *Tans v. Sils*, 29 U. C. 497; *Ellis v. Mason*, 7 Dowl. 598; *Brooks v. Elkins*, 2 M. & W. 74; *Waentley v. Williams*, 1 M. & W. 533; *Green v. Davis*, 4 B. & C. 235; *Walker v. Roberts*, C. & M. 690; *Ritchie v. Prout*, 16 C. P. 426; *Byles* Bails (ed. 1856), 11.

HAGARTY, C. J.—The case presented at the trial was certainly not free from suspicion. The memorandum is dated November, 1866. The action is brought in July, 1871, nearly five years after, and against a second set of executors. The first question to be considered is the plaintiff's right to recover by the simple production of this instrument. It is either an admission of an existing debt to support an account stated, or it is

a promissory note. If the latter, the objection as to the want of a stamp must prevail.

"In order to constitute an account stated, there must be a statement of some certain amount of money being due, which must be made either to the party himself or to some agent of his"—per Parke, B., in *Hughes v. Thorpe*, 5 M. & W. 667.

There is no doubt that in the paper in evidence there is a statement of a specific amount, and the document declares that it is "good to plaintiff for that amount, on demand."

It is not easy to find any legal definition of the word "good." It is not so specific as an "I. O. U.," which seems to have acquired a definite meaning as an admission of a debt. My brother Wilson somewhat discusses the point in *Tyke v. Cosford*, 14 C. P. 68. He says, "The words are, 'good to T. T. (the plaintiff) to the amount of \$300, to be paid to him.' This seems to be an express declaration or acknowledgment of debt, for whatever 'good' may mean, 'to be paid,' must surely mean something. Suppose 'good' had not been there at all, but the instrument had been merely, 'the amount of \$300 to be paid to T. T.,' it can scarcely be doubted that this would have been as strong and as direct an acknowledgment as could well have been made of a debt against the person making it. He thinks this the same as 'I. O. T. T. \$300.' He adds, 'A plain I. O. U. so much money, is evidence of an account stated, but with the words 'to be paid' it becomes a promissory note,' referring to *Brooks v. Elkins*, 2 M. & W. 74; *Waentley v. Elsee*, 1 C. & K. 35. Again, he says he inclines to hold that the word "good" would have amounted to an acknowledgment sufficient to sustain an account stated, if payable in money. 'As 'I owe you' is an acknowledgment, 'due to you' should be so too, and it is so according to the cases in *Hamp. Rep.* Why not also 'good to you'?"

My own strong impression is, that "good" in this instrument must be considered as equivalent to "due," and that no rational distinction can be drawn between them. If the document mean anything it must be, in substance, to import that it is to be considered as declaring to the plaintiff that on demand he is entitled to \$850 from the person signing it; that it is to be good to him to enable him to demand such sum from the signer.

Broten v. Gilman, 13 Mass. 158, was a case of a memorandum signed, "Good for \$126 on demand," signed by defendant. It was decided that a holder, who could not prove it was given to him, could not recover. No question is raised as to the effect of the word "good." Parker, C. J., says: "On a count for money lent, money had and received, &c., it would be conclusive evidence of so much due, unless the party signing it should prove it was given with a different intent. The present plaintiff must shew it was given to him."

In *Franklin v. March*, 6 New Hamp. 364, "Good to R. B. or order, for \$30, borrowed money," was held a good promissory note. Parke, J., says "Good to R. C. or order," is equivalent to a "promise to pay R. C. or order."

I do not refer to these American cases for any other purpose than to shew the common understanding as to the term "good." It is, I think,