

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.

EXCHANGE BANK V. SPRINGER.

Surety—Cashier of bank—Buying and selling stocks—Negligence of Directors.

In an action against the sureties of an absconding cashier it appeared that the bank had become possessed of certain stock on the security of which advances had been made, and to save loss the stock was put on the market and other stock bought to affect the price. An account was kept in the books of the bank called the "C. R. M. Trust Account," in which these stock transactions were recorded. The cashier used this account to assist him in some private speculations, and having become a defaulter in a large amount he absconded.

Held, affirming the judgment of the court below (13 Ont. App. R. 390), that even if this dealing in stocks by the bank was illegal it would not relieve the sureties of the cashier from liability on their bonds.

Robinson, Q.C., and *Malone*. for the appellants.

Bain, Q.C., for the respondents.

GREENE V. HARRIS.

Practice—Set off—Not pleaded in action—Right to set off judgment—Equitable assignment.

G. and H. brought counter actions for breaches of agreement. In March, 1884, G. obtained a verdict with leave to move for increased damages, which was granted, and in June, 1885, he signed judgment. In April, 1884, G. assigned to H. all his interest in the suit against H. and gave notice of such assignment in May, 1884.

In February, 1885, H. signed judgment against G. on confession.

Held, reversing the judgment of the court below (25 N.B. Rep. 451), *STRONG, J.* dissenting, that H. could not set off his judgment against the judgment recovered against him by G. and assigned to H.

Weldon, Q.C., for the appellant.

THE EXCHANGE BANK OF CANADA V. THE PEOPLE'S BANK.

Bank cheques—Acceptance by cashier and president at a future date.—Liability of bank.

In 1881 G. having business transactions with the Exchange Bank agreed with C., president and manager of the bank, that in lieu of further advances, the bank would accept his cheque, but made payable at a future date. On the 19th October, 1881, G. drew a cheque on the Exchange Bank after having it accepted as follows: "Good on 19th February, 1882." T. Craig, president, got the cheque discounted by the People's Bank, and deposited the proceeds to his credit in the Exchange Bank. This cheque was renewed on the 23rd of May, and it was presented at the Exchange Bank and paid. Thereupon another cheque for the same amount was accepted in the same way and discounted by the People's Bank on the 7th September, 1883. At the time of the suspension of the payment by the Exchange Bank, the Peoples' Bank had in its possession four cheques signed by G. and accepted by T. Craig, President of the Exchange Bank, which were subsequently presented for payment on the dates when they were payable and duly protested and also after the three days of grace.

The total amount of these cheques amounted to \$66,020.64, and one of them, viz., the one dated 7th September, 1883, for \$31,000, was a renewal of the cheque, the proceeds of which had been paid to the credit of G. in the Exchange Bank. C. was manager as well as president of the Exchange Bank.

On an action brought by the People's Bank against the Exchange Bank for the recovery of the sum of \$66,020.74, based on the four cheques in question, the Exchange Bank pleaded *inter alia* that C. had not acted within the scope of his duties and within the limits of his powers, and that the bank had never authorized or ratified his acceptance of G's cheque.

Held, affirming the judgment of the Court of Queen's Bench (*STRONG, TASCHEREAU and GWYNNE, JJ.*, dissenting), that under the circumstances the Exchange Bank was liable for the acceptance by their President and Manager of G's cheques discounted by the