

For these reasons the action should be dismissed with costs.

The plaintiff may, I think, overcome the comparatively trifling inconvenience occasioned to him by exclusion from defendants' land by a slight re-arrangement of his own premises, and therefore, even if I had reached a different conclusion on the merits, damages, instead of relief sought, would have fully met the requirements of the case.

MAY 14TH, 1906.

DIVISIONAL COURT.

SMITH v. TRADERS BANK OF CANADA.

Banks and Banking—Cheque—Indorsement to Order of Plaintiff—Forgery of Plaintiff's Name—Payment by Bank on Forged Indorsement—Possession of Cheque—Action to Recover Cheque or Amount—Failure because of Non-presentation and Non-indorsement by Plaintiff.

Appeal by defendants from judgment of senior Judge of County Court of Bruce, in favour of plaintiff for \$438.71, the amount of a cheque (with interest) sued for by plaintiff.

The appeal was heard by BOYD, C., MAGEE, J., MABEE, J. A. H. Clarke, K.C., for defendants.

H. J. Scott, K.C., for plaintiff.

MABEE, J.:—The facts are not in dispute, and no questions turn upon any conflict of evidence at the trial.

On 10th August, 1905, W. J. Pulling & Co., of Windsor, issued their cheque for \$425.99, payable to Captain J. W. Willisroft, and delivered it to him. This cheque was in payment of freight owing to plaintiff by Pulling & Co., which had been earned by plaintiff's boat, of which Willisroft was the captain; he was the agent of plaintiff, and had authority to collect freight, cash cheques, and make payments connected with his boat. Willisroft indorsed the cheque payable to the order of plaintiff, took it to defendants' bank, upon which it was drawn, where it was stamped "certified,"