

STREET, J.

JUNE 20TH, 1903.

TRIAL.

MCMILLAN v. ORILLIA EXPORT LUMBER CO.

Chose in Action—Assignment of—Action by Assignee—Defective Notice of Assignment—Costs.

Action and counterclaim tried at Sault Ste. Marie. After hearing the evidence the learned Judge dismissed the counterclaim and all of the plaintiff's claim, except his claim of \$184.93, being a sum of money owing by defendants to one James Hurdle, which plaintiff alleged had been assigned to him, as to which judgment was reserved. The facts with regard to it were as follows. One Hollway was an inspector and salesman for defendants, and before 22nd July, 1902, he had purchased from Hurdle a quantity of timber for defendants, and they were indebted to Hurdle in \$184.93 for it. On 22nd July, 1902, Hurdle made out his account against defendants in detail, and at the foot of it signed an order, addressed to defendants, "Pay to order of J. W. McMillan (plaintiff) above amount, \$184.93." Plaintiff a few days afterwards drew on defendants for the full amount of his claim in the present action, \$541.46, including the Hurdle claim. This draft was presented to defendants on 1st August, 1902, and they wrote on the same day to plaintiff to say that they could not reconcile the amount with their figures, and to ask for a detailed statement. The plaintiff sent defendants a statement, part of it being, "To amount of Jas. Hurdle, order for lumber bought of Hollway, \$184.93." The statement was enclosed in a letter to defendants, dated 7th August, 1902, in which plaintiff said: "I attached a copy of account to draft and also an order which I had from Jas. Hurdle, from whom Mr. Hollway bought oak lumber to the amount of order given me." It appeared from the detailed account of Hurdle against defendants that only \$124.80 of the amount was for oak lumber, the balance being for basswood lumber.

STREET, J., held, on the evidence, that, if Hurdle's order was ever attached to the draft on defendants, it was not so attached at presentation, and the only notice to defendants of its existence was the mention of it in the account which defendants received from plaintiff in the letter of 7th August and the reference to it in that letter. The order amounts to an equitable assignment of Hurdle's claim against defendants: *Hall v. Prittie*, 17 A. R. 306; but plaintiff did not