

mistake, demanded from the defendant repayment of the \$1,000, which he refused to make except as to the difference between the \$2,827 and the \$3,000.

*Held*, that the defendant's right to retain the money as against the bank and Elliott was no stronger than Halliday's would have been, and that the defendant had no right to retain the overplus of the money paid by reason of the mistake of the plaintiffs.

*Wallace Nesbitt*, and *T. P. Galt*, for the plaintiffs.

*Moss*, Q.C., and *Garrow*, for the defendant.

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MEREDITH, C.J., ROSE, J., }  
MACMAHON, J.

Oct. 22.

AIKINS *v.* DOMINION LIVE STOCK ASSOCIATION OF CANADA.

*Club—Committeemen—Liability—Amendment—Parties—Co-contractors—Application to add—Affidavit—Costs.*

Where credit is given to an abstract entity such as a club, the creditor may look to those who in fact assumed to act for it, and those who authorized or sanctioned that being done, at all events where he did not know of the want of authority of the agent to bind the club. ROSE, J., dissenting.

Review of English cases on this subject.

The liability in such cases is not several, but joint.

By analogy to the old practice where a plea in abatement for non-joinder of co-contractors was pleaded, a defendant now moving to stay proceedings until the co-contractors are added as parties, should show by affidavit the names and residences of the persons alleged to be joint contractors whom he seeks to have added, and the same liability as to costs, in case persons are added who turn out not to be liable, should be entailed upon him.

In an action begun against an incorporated company, as a partnership, to recover a sum for costs paid by the plaintiffs, an order in Chambers allowing the plaintiffs to amend by adding as defendants certain members of the executive committee of the company, and to charge them in the alternative as personally liable by reason of their having sanctioned the arrangement between the plaintiffs and the association, was affirmed without prejudice to the defendants applying to add parties.

*W. R. Smyth*, for the plaintiffs.

*Allan McNab* and *L. G. McCarthy*, for the defendants.

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BOYD, C., }  
Weekly Court.

[Oct. 22.]

ELLIS *v.* TOWN OF TORONTO JUNCTION.

*Police magistrate—Appointment without salary—Salary given and subsequently rescinded.*

The plaintiff was appointed police magistrate of Toronto Junction by commission of the Lieutenant-Governor, expressed to be without salary, in 1892, the Town Council having previously in 1890 requested that a police magistrate should be appointed. In 1890 the population was under 5,000, but in 1892, when the appointment was made, it was over 5,000; and on the plaintiff demand-