

benefit, although there was no contract under seal. *Bernardin v. North Dufferin*, 19 S.C.R. 581, followed.

*Mathers* for plaintiff. *Bradshaw* for defendant.

Dubuc, J.]

CLAY v. GILL.

[March 9.

*Fraudulent assignment—Transfer of overdue promissory note—Payment by note—Parties.*

Appeal from a County Court. The plaintiff's claim was for the amount of an account owing by defendant for goods supplied by Spratt & Co., who made an assignment on the 4th March, 1898, for the benefit of their creditors, the account having been with others sold and transferred by the assignee to the plaintiff March 19, 1898. Previous to the assignment for creditors, viz., on February 8, 1898, the sheriff had taken possession of Pratt & Co.'s store under an order for attachment issued under Rule 826 of the Queen's Bench Act, 1895. Defendant showed that he had given the manager of Spratt & Co. a promissory note for the amount of the account, dated 5th February, payable two months after date, and that this note was outstanding in the hands of a bank at the time of the trial; and he contended that the account against him had been thereby settled, also that the bank should be made a party to the action, as he was liable to it for the amount of the note. It appeared, however, that the note was ante-dated, having been actually given on February 9th, after the attachment, and that it was in the hands of Spratt & Co. until after its maturity.

*Held*, that defendant could not have been compelled to pay the note to Spratt & Co., if they had still held it, because they had no right to the money, neither was he liable to the bank which took it after maturity, and that plaintiff was entitled to a verdict.

*Held*, also, that it was not necessary to make the holder of the note a party to the action. *Bertrand v. Hooker*, 10 M.R. 445, not followed.

*Ewart*, Q.C., for plaintiff. *Bradshaw* for defendant.

Killam, J.]

ORTON v. BRETT.

[March 9.

*Practice—Lost note—Indemnity—Bills of Exchange Act, 1890, s. 69—Costs—Reference to the Master.*

Plaintiff's action, commenced before the Queen's Bench Act, 1895, was upon a promissory note made by defendant, and as the note had been lost, she had tendered a bond of herself and husband as indemnity, but there was no affidavit of justification by the surety. Defendant pleaded the loss of the note, and plaintiff moved to strike out the plea.

*Held*, that the indemnity tendered was clearly insufficient, and that the proper order to be made was that upon the plaintiff giving an indemnity to the satisfaction of the Master against the claims of any other person on the