

Bank to be made perfect. The oral and documentary evidence is, to my mind, absolutely conclusive upon the question.

The learned judge discusses the facts at full length, bringing out the numerous references in all the negotiations to the fact that MacArthur was dealing only with the assignee for the purchase of the notes, and concludes thus :

Now upon this evidence there cannot be entertained a doubt that the transaction whereby MacArthur acquired the note sued upon was one of purchase from the assignee of the Knowles estate of the whole batch of notes, amounting in the whole to \$16,086 and including the note sued upon, as one purchase for the sum of \$13,673.56, for which he gave to the assignee of Knowles his draft upon the Commercial Bank. Upon that draft being accepted by the Bank, and the amount being by them applied to the credit of their claim against the estate of Knowles, the Bank ceased to have any claim or title to or interest in the note which became the absolute property of MacArthur, but his title, as the note was overdue when purchased by him from the assignee of the Knowles estate, was only such as could be acquired by purchase of a *chose in action* belonging to the estate of Knowles in the hands of the assignee of that estate for sale, and as the transaction between Knowles and the defendant upon which the note was made by the defendant was such that Knowles could not have recovered against the defendant in an action brought against him, so neither can MacArthur, and the appeal must be dismissed with costs.

Patterson, J., also delivered judgment affirming the decision of the trial court.

CHANCERY DIVISION, H. C. J., ONTARIO

Henderson *v.* Bank of Hamilton

The damages recoverable by a non-trading depositor in the savings bank department of a bank, who has made his deposit subject to special terms, on the wrongful refusal of the bank to pay it to him personally, are limited to the interest on the money.

A bank having received a deposit subject to certain notice of withdrawal, if required, cannot set up as a defence to an action for the deposit the absence of such notice, unless the refusal to pay was based on that ground.

The defendants having paid into Court twenty cents less than the correct amount due by them, the plaintiff was held entitled to full costs.

This was an action tried before Street, J., at Stratford, in October, 1894, for the recovery of moneys on deposit, and for damages for refusal to pay the same. The facts of the case are