

mised to discharge the liability to them of these defendants upon the notes. The onus of proof of that was upon the defendants. They attempted to prove it by the testimony of the payee, and by an entry made in his bank pass-book by, or authorised by, their agent at their country agency where this business was carried on. The entry was said by the plaintiffs to have been a mistake. When the security was given, the agreement upon which it was given was put in writing, and that writing shewed that the security was for the whole indebtedness of the customer. The customer swore that that was not the true agreement, and that the security was to be applied for the relief of the defendants; but that testimony was not to be credited in face of the writing and all the circumstances and probabilities. The defence on this ground entirely failed.

It was said that, having made the entry in the customer's pass-book, the plaintiffs were estopped from now contending that in truth that was a mere mistake arising from a misunderstanding. But no representation was made or intended to be made to the defendants; they sought nothing and had no communication with the plaintiffs on the subject; and, if some representation had been made, it could be withdrawn if made in error. In the circumstances, it was absurd to suggest an estoppel.

The appeals should be dismissed with costs.

RIDDELL, LENNOX, and MASTEN, JJ., concurred; LENNOX and MASTEN, JJ., each giving reasons in writing.

*Appeals dismissed.*

SECOND DIVISIONAL COURT.

MARCH 31ST, 1916.

\*BRAZEAU v. WILSON.

*Contract—Installation of Heating System in House—Failure to Heat House as Agreed—Action for Balance of Price—Counterclaim for Moneys Paid on Account—Return of Heating Fixtures Put in—Use of Fixtures—Compensation for Breach of Contract—Costs.*

Appeal by the plaintiff from the judgment of the Judge of the District Court of Temiskaming dismissing an action to enforce a mechanic's lien for \$396.33 and awarding the defendant Wilson \$200 on his counterclaim for moneys paid on account of the contract price.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.