

Held, that the Statute of Limitations did not begin to run until one year from the date of the payment made, viz., on November 1st, 1854, when the next payment became due, and default was made, and that an action to recover possession begun on October 19th, 1874, was commenced in time, and that the plaintiff was entitled to recover.

Judgment of ROBERTSON, J., reversed.

Clute Q.C., for the plaintiff.

Shepley, Q.C., and H. W. Delaney, for the defendants.

ROBERTSON, J., }
Weekly Court. }

[Sept. 26.]

IN RE ERMATINGER.

Trustee—Compensation—Railway company—Trustee of bonus debentures—R.S.O. ch. 110.

Petition of C. O. Ermatinger for compensation for services as trustee in respect to the debentures mentioned in the various municipal by-laws set out and confirmed in 58 Vict., ch. 113, O., whereby the said debentures, which had been voted by the respective municipalities as a bonus to a certain railway company, were to be held by the petitioner until completion of the railway as in the said by-laws respectively mentioned, and then delivered to the railway company, which, however, had assigned them to the Imperial Bank of Canada.

Held, that the petitioner was a trustee within the meaning of R.S.O. ch. 110, and was entitled to compensation thereunder for his services in connection with the holding of the said debentures.

Moss, Q.C., and Saunders, for the petitioner.

Bicknell, for the Imperial Bank of Canada.

C. W. Kerr, for the railway company.

BOYD, C., }
Non-jury Sitings. }

[Oct. 8.]

BANK OF TORONTO v. HAMILTON.

Mistake—Banks and banking—Recovery back of money—Error in telegraphing credit.

The defendant sold cattle to Halliday for \$2,827, the condition being that if the purchase money was not paid the defendant was to resume possession of the cattle. Halliday came to Elliott with a shipping bill of the cattle and asked an advance upon that security. Elliott agreed to advance \$2,000 and issued a cheque for that amount payable to the Bank of Toronto at Montreal, on account of the defendant. Elliott handing the cheque to the plaintiffs at Montreal, requested them to telegraph the \$2,000 to the defendant's credit in Toronto, but by a mistake in transmitting the message, the amount was received in Toronto as \$3,000. The defendant came to the bank in Toronto, and being told that \$3,000 was at his credit, drew it out and allowed the cattle to be shipped away from Montreal. The bank had no notice of the transaction out of which the credit arose.

After the cattle had been shipped, the plaintiffs, having discovered their