

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

Divisional Court.]

[Feb. 15.]

BLACK v. STRICKLAND.

*Bills of exchange—Special endorsement—Negotiability.*

The possession of bills by the endorser, after he has specially endorsed them, is *prima facie* evidence that he is the owner of them, and that they have been returned to him, and taken up in due course of time upon their dishonour, although there be no re-indorsement; so that by the possession he is remitted to his original rights.

On July 25th, 1877, W. drew a bill of exchange on the defendants, payable to his own order at sixty days, which they accepted. This note was first endorsed "pay to the order of the Bank of Ottawa"; the Bank of Ottawa specially endorsed it for collection to the Bank of Commerce. The bill was dishonoured and protested, and came again into the hands of the Bank of Ottawa, who returned it to W. on or before December, 1877. It afterwards, how did not clearly appear, got back into the hands of the Bank of Ottawa. In 1881, the plaintiff, who was W.'s agent, got it from the Bank of Ottawa, along with other papers of W. W. then endorsed it to the plaintiff, in Nov. 1881. The plaintiff now sued the acceptors of the bill.

When produced the bill appeared with the special endorsements all struck out, and leaving only the signature of W. to the first special endorsements, and with the last special endorsement to the order of the plaintiff. There was no re-endorsement from the Bank of Ottawa to W. or the plaintiff.

*Held*, [reversing FERGUSON, J., who had nonsuited the plaintiff,] in the absence of other evidence, it was to be inferred that W. satisfied any claim of the Bank of Ottawa, "took up" the bill, and thereby procured or had the right to make the cancellation of the previous special endorsements. Thus the objects for which the bill had been endorsed to the Bank were satisfied, and the special endorsements became inoperative upon the return of the instrument. The mere handing it back was enough, in these circumstances, to make W. the legal holder with the right to re-endorse to the plaintiff, for the authorities show that, whether the Bank of Ottawa returned the bill to W. because their claim on it, as discounters, was satisfied, or whether it was not discounted by the Bank, but merely left with them by W. for collection; in

either case, when it came back to W., he was remitted to his original rights against the acceptor.

*Callow v. Lawrence*, 3 M. and S. 95, cited and followed.

*Wells*, for the plaintiff.

*S. H. Blake, Q.C.*, for the defendants.

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DOVEY v. IRWIN.

*Pleadings—Admissions in answer.*

Where a defendant admits any of the allegations in the plaintiff's bill, the whole of the admission should be looked at according to the rule in *Reade v. Whitchurch*, 3 Sim. 562; that the sense and not merely the grammatical construction or form is to be regarded as the criterion of the extent and scope of the admission.

When A. sued for a wrongful conversion of certain timber by the defendant, setting out an agreement made by him and B. with the defendants, under which they agreed to deliver certain timber to the defendants, and alleged that B. was only a surety in respect of the said agreement, and that no timber had been delivered under the said agreement, but the defendants wrongfully made a seizure of some of the plaintiffs' timber; and the defendants admitted in their answer that they took possession temporarily of certain timber, the joint property of the plaintiff and B. (who was a defendant), and that before they took permanent possession of such joint property, they agreed with B. for a reduction of the price by an agreement which he had the power to make, and under which they acted.

*Held*, not such an admission as entitled the plaintiff to a decree, for the onus still rested on the plaintiff to prove himself the sole owner of the timber, and that he had a cause of action in thus suing alone, after which the onus would shift to the defendants to prove their defence.

*Hector Cameron, Q.C.*, for the appeal.

*S. H. Blake, Q.C.*, contra.

Divisional Court.]

[Feb. 15.]

CHURCH v. FULLER.

*Costs—Jurisdiction.*

Whatever may be the rule in England, this Court has maintained the jurisdiction to make a defendant pay costs in a suit for specific per-