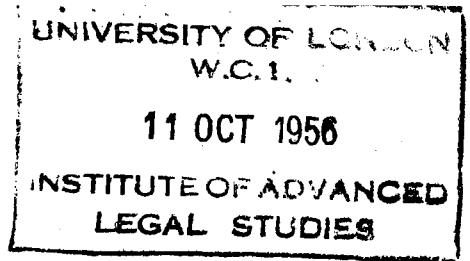


Appeal
No 19 of 1895.

29412



In the Privy Council.

ON APPEAL FROM THE
COURT OF APPEAL FOR ONTARIO.

BETWEEN

FRANK ROSS - - - - - (Plaintiff) Appellant,

AND

W. C. EDWARDS & CO. - - - - - (Defendants) Respondents.

RECORD OF PROCEEDINGS.

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In the Privy Council.

ON APPEAL FROM THE
COURT OF APPEAL FOR ONTARIO.

BETWEEN
FRANK ROSS - - - - - (*Plaintiff*) *Appellant*,
AND
W. C. EDWARDS & CO. - - - - - (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

IN THE COURT OF APPEAL FOR ONTARIO.
CASE ON APPEAL TO THE COURT
OF APPEAL FOR ONTARIO.

10

RECORD.
No. 1.
Statement of
Case.

BETWEEN
Frank Ross - - - - - (Plaintiff) *Appellant*,
and
W. C. Edwards & Co. - - - - - (Defendants) *Respondents*.

Writ issued the 10th day of December 1891.
Writ amended the 18th day of February 1893,
pursuant to order of the same date.

Statement of Case.

This is an appeal by the (Plaintiff) *Appellant* from the judgment pronounced 20 in this action by the Honourable Mr. Justice Meredith, on the twenty-fifth day of April, A.D. 1893, dismissing this action with costs.

Statement of Claim.

RECORD.

1. The Plaintiff is a Merchant residing at the City of Quebec in the Province of Quebec, and the Defendants are Lumber Manufacturers who prior to and during and ever since the year 1887, carried on business at Rockland in the Province of Ontario.

No. 2.
Statement of
Claim, deli-
vered 27th
Feb., 1893.

2. That in and prior to the year 1887 and up to the time of his decease on first of October, 1888, the late Honourable James Gibb Ross in his lifetime of the City of Quebec, carried on business as a Merchant in said City of Quebec under the name of Ross & Co.

10 3. That on said first day of October, 1888, the said Honourable James Gibb Ross departed this life having first made his last Will whereby he devised all his estate of whatsoever nature and kind and wheresoever situate to the Plaintiff in trust for the purposes in said Will mentioned, and probate of said Will was duly granted to the Plaintiff in the Province of Quebec by the proper Court in that behalf.

4. That on or about the seventh day of June, 1890, Letters of Administration with the Will annexed, were duly granted by the Surrogate Court for the County of Simcoe in the Province of Ontario, the proper Court in that behalf, to one John Hoskin of the City of Toronto in the Province of Ontario, Esquire, of all and singular the estate and effects rights and credits of said late Honourable James
20 Gibb Ross in the Province of Ontario, and on or about the 30th days of June, 1890, and 30th September, 1891, the said John Hoskin as such administrator duly assigned to the said Plaintiff all and singular the said estate and effects rights and credits of said late Honourable James Gibb Ross in the Province of Ontario, including amongst other portions of said estate the claim and right of action sued for herein and the Plaintiff is now the holder thereof.

5. In the month of February, 1888, one William Little, a Lumber Dealer carrying on business in the Province of Quebec, applied to said Ross & Co., for a loan of \$7,500 upon the security of certain deals which he then represented to said Ross & Co., were his property and which he further represented were then in the
30 lumber yard of the Defendants at Rockland aforesaid subject to his order.

6. That the said Ross & Co., agreed with said Little to make said loan on the security of the said deals which security was to be given by an order upon Defendants for said lumber in favor of said Ross & Co., to be made by the said Little upon and accepted by the Defendants and on the Defendants agreeing to hold said lumber to the order of and for said Ross & Co.

7. That said Little agreed to secure the said Ross & Co., on the said deals and wrote on the back of an acceptance which he had from the Defendants for the said deals, and whereby the Defendants acknowledged that they held subject to the order of the said Little 1,000,000 feet B. M. 3 inch M. cull deals 8-13 and
40 493,590 feet B. M. 3 inch M. cull deals 14-16, the words following, that is to say:—

“ Please hold the within mentioned quantity of deals subject to the order of
“ Ross & Co., Quebec.

“ Quebec, 28th February, 1888,

“ WM. LITTLE.”

RECORD.

No. 2.
Statement of
Claim deli-
vered 27th
Feb., 1893—
continued.

and the Defendants duly accepted the said order, and thereby undertook to hold said lumber for and on behalf of said Ross & Co., which acceptance and undertaking were in the words and figures following, that is to say :

“ Will hold within deals subject to order of Ross & Co., as above authorized.

“ W. C. EDWARDS & Co.,

“ Rockland, March 15th, 1888.”

written at the foot of said order.

8. That the said Ross & Co., thereupon in pursuance of said agreement and upon the security of and relying upon the acceptance and undertaking of the Defendants as above set forth, and upon receiving such acceptance which the said Little delivered to them, advanced in several sums at various dates in the month of March, 1888, to the said Little the said sum of \$7,500.

9. The said advances were to be repayable in four months from the dates on which said loan was made with two-and-a-half per cent. commission thereon and also interest.

10. That the said Little made default in payment of the moneys so advanced to him by the said Ross & Co., at maturity thereof and has never paid the same, and said Ross & Co., demanded delivery of said lumber from the Defendants in accordance with the said undertaking and agreement, and although the Defendants delivered to the said Ross & Co., ninety-six thousand nine hundred and seventy-five feet portion of said lumber they have never delivered the residue thereof to the said Ross & Co., or have said Ross & Co., or the plaintiff ever received the same.

11. The Defendants by their acceptance and undertaking in the seventh paragraph hereof mentioned represented to the said Ross & Co., that the said deals in the said order referred to were the property of the said Little, and that the same were lying in their said yard at Rockland, and undertook and agreed that the same would be delivered to said Ross & Co., when demanded by them, and the said Ross & Co., relying on and believing the said representations to be true made the said advances in money to said Little on the strength thereof.

12. That said representations of said Defendants as to the deals being the property of the said Little, except as to the 96,975 feet hereinbefore mentioned, and that the said quantity of deals belonging to the said Little were then in their, the Defendants, said yard at Rockland, were and each of them was false and untrue, the said deals except as aforesaid not then being the property of said Little as represented by the Defendants, and not being in the Defendants' said yard, and the same were never delivered to the said Ross & Co., or to the plaintiff, except as to the said 96,975 feet.

13. That the said Ross & Co. have realized and received on account of said advances commission and interest the sum of \$1,096.88, and there is now owing to the Plaintiff as the representative of said late Honourable James Gibb Ross and as assignee as aforesaid of his estate and effects in the Province of Ontario, the sum of \$6,538.79, as of 6th June, 1888, and interest thereon since that date.

14. As an alternative case, the Plaintiff says that the Defendants converted to their own use and wrongfully deprived the said Ross & Co. of the said quantity of lumber, save and except the said 96,975 feet.

15. The Plaintiff, by reason of the premises, has lost the said sum of \$6,538.79, balance of said moneys so advanced to said Little and commission thereon as aforesaid, and has also lost the interest thereon since the 6th June, 1888, and claims to recover the same from the Defendants, and the costs of this action.

The Plaintiff proposes that this action be tried at the City of Ottawa.

Delivered this twenty-seventh day of February, A.D. 1893, by Alexander Ferguson, of the City of Ottawa, in the County of Carleton, Solicitor for the Plaintiff.

RECORD.
No. 2.
Statement of
Claim, deli-
vered 27th
Feb., 1893—
continued.

Statement of Defence.

10 1. The Defendants say that on and prior to the 12th day of January, 1888, the Defendants had in their Mill yards at Rockland a large quantity of lumber as warehousemen for the same, being the property of a firm of Hurteau Brothers, Lumber Merchants, which the Defendants were at and prior to the said date bound to deliver upon demand to the said Hurteau Brothers.

No. 3.
Statement of
Defence, deli-
vered 7th
March, 1893.

20 2. The Defendants further say that on the said 12th January, 1888, the said Hurteau Brothers by their agent, one E. H. Lemay, entered into an agreement with William Little in the Statement of Claim mentioned by which they agreed to sell to the said William Little in all 1,493,590 feet of lumber, being a portion of the lumber, the property of the said Hurteau Brothers then in the said Mill yard of the Defendants as aforesaid, and being the lumber in respect of the alleged non-delivery or conversion of which the plaintiff complains, which agreement is in the words and figures following:—

“ MONTREAL, 12th January, 1888.

“ Agreement between Wm. Little Esq., and E. H. Lemay.

“ Wm. Little of the City of Montreal, buys and E. H. Lemay of the same place sells the following lumber now lying at W. C. Edwards & Co's., yard in Rockland 1,000 000 feet 3 inch Mill cull deals 12 by 13 and about 10 per cent. 8 to 11 feet at (\$7) seven dollars per M. B. M., F. O. B. Rockland, Ont., the same being a fair average in width of the 3,718,718 feet lot 493,590 feet 3 inch Mill cull deals 14 by 16 at \$7.50 F. O. B. Rockland, Ont. Terms six months note from first December, 1887, with three months interest' at 7 per cent. added to invoice. To deliver to teams any of the above lots in case Wm. Little so desires before the opening of Navigation.

“ (Sgd.) E. H. LEMAY,
“ (Sgd.) W. LITTLE.”

and the said Hurteau Brothers and the said Lemay their agent as aforesaid thereupon respectively sent to the Defendants the letters or orders in the words and figures following.

“ MONTREAL, 12th January, 1888.

40 “ MESSRS. W. C. EDWARDS & Co.,

“ Rockland, Ont.,

“ Gentlemen,

“ You will please rectify Mr. Lemay's order for one million feet 3 inch Mill culls 8 by 13 feet and 493,590 feet, 3 inch Mill culls 14 by 16 feet sold to Mr.

RECORD.
No. 3.
Statement of
Defence, deli-
vered 7th
Mar., 1893.—
continued.

“ William Little, F. O. B. of Barges with option to draw them from the piles if
“ they want some during the winter.

“ Yours truly,
“ N. HURTEAU ET FRERE.”

“ MONTREAL, January 18th, 1888.

“ Messrs. W. C. EDWARDS & Co.,
“ Rockland, Ont.

“ Gent.,

“ Please deliver to Wm. Little Esq., or order the following lumber in your
“ yard to my order viz.:—1,000,000 feet B. M., 3 inch M. cull deals 8 by 13,¹⁰
“ 493,590 feet B. M., 3 in. M cull deals 14 by 16,

“ and oblige,

“ Yours truly,
“ E. H. LEMAY.”

3. The Defendants had no notice or knowledge of the terms of the agreement between the said Hurteau Brothers by their agent the said Lemay and the said Little firstly above set out save in so far as the said orders or letters secondly and thirdly above set out constituted such notice or knowledge.

4. The Defendants upon receiving from the said Little the letter or order set out and dated 18th January, 1888, wrote across the same the words and figures²⁰ following. “ Accepted, W. C. Edwards & Co., January 20th, 1888,” and delivered the same to the said Little and the said letter or order with the words and figures so written across the same constitutes the alleged acceptance which the seventh paragraph of the Statement of Claim alleges the said Little held from the Defendants.

5. The last mentioned letter or order with the said words and figures written across the same was thereafter presented to the defendants with an order endorsed thereon and signed by the said Little in the words and figures following.

“ Please hold the within mentioned quantity of deals subject to the order of
“ Ross & Co., Quebec.

30

“ Quebec, 28th February, 1888.

WM. LITTLE.”

And the Defendants thereupon further wrote thereupon the words and figures following, “ Will hold the within deals subject to order of Messrs. Ross & Co., as “ above authorised. Rockland, March 15th, 1888. W. C. Edwards & Co.,” which is the alleged acceptance and undertaking in respect of which this action is brought.

6. The Defendants further say that they had no notice or knowledge of the transactions between the said Little and the said Ross & Co., in the 5th, 6th, 7th, 8th, 9th, 10th and 11th paragraphs of the Statement of Claim mentioned save in so far as the matters in the last preceding paragraph hereof set out constituted⁴⁰ such notice or knowledge and that they had no notice or knowledge whatever of any of the representations alleged in the 5th paragraph of the Statement of Claim to have been made by the said Little to the Plaintiffs.

7. The Defendants further say that before and at the time of the agreement between Hurteau Brothers by their agent Lemay and the said Little in the 2nd paragraph hereof mentioned and thence continuously down to a date subsequent

to the judgment in the suit of Edwards vs. Ross, and others hereinafter mentioned, the said lumber in the said agreement mentioned and which forms the subject of this action, and which was as aforesaid a portion only of a large quantity of lumber, the property at and before the said agreement of the said Hurteau Brothers, in the Mill yard of the Defendants, was not in any way selected, set apart or separated from the bulk of which it formed part or distinguished in any way, but was mixed through the said bulk, the said bulk consisting of lumber partly of the size and description of the lumber in question, and partly of lumber of other sizes and descriptions.

RECORD.
No. 3.
Statement of
Defence, deli-
vered 7th
Mar., 1893.—
continued.

10 8. The Defendants further say that at the commencement of the negotiations of the said Ross & Co. with Little, in the Statement of Claim set out, and before they received from the said Little the alleged acceptance and undertaking in the 5th paragraph hereof described, and in respect of which this action is maintained, and before they made any of the alleged advances to the said Little in the Statement of Claim mentioned, they were fully informed of the terms of the agreement and letters or orders in the 2nd paragraph hereof set out, and had the same presented and explained to them by the said Little, and were aware of the fact that Little had not paid for the said lumber, and well knew what the title of Little thereto was, and that the same formed a portion only of a much larger quantity
20 and had never been selected or separated or set apart from the bulk of which it formed a part, and the said Ross & Co. well knew that the Defendants were warehousemen merely of the said lumber, and that the alleged acceptance and undertaking of the Defendants in the 5th paragraph hereof described was not intended to be, nor did the said Ross & Co. ever suppose it to be, more than an agreement or undertaking to treat the said Ross & Co. as the assignees of such title to the said lumber as the said Little possessed.

9. Thereafter the said Little made default in payment to the said Hurteau Brothers of the purchase money for the said lumber whereupon the said Hurteau Brothers by their solicitors gave the Defendants notice thereof and forbade the
30 Defendants to deliver the said lumber to the said Little or to the said Ross & Co., which notice is in the words and figures following:—

“TORONTO, June 13th, 1888:

“We forbid you to deliver to William C. Little or James Ross & Co.,
“or any person claiming under them any lumber referred to in order dated Janu-
“ary 12th, 1888, signed by E. H. Lemay, we being the owners thereof, and the said
“Little having become insolvent without having paid for the same and we also
“forbid you delivering any lumber belonging to N. Hurteau et Frère, that is now
“in your yard to the said Little or Ross or from separating or interfering with any
“lumber at any time owned by us and claimed by Little or Ross.

40

“(Sgd.) BEATTY, CHADWICK & BLACKSTOCK,
“Solicitors for N. Hurteau & Frere.”

10. The said Hurteau Brothers, and the said Ross & Co., both claiming the said lumber and threatening actions against the Defendants in respect thereof and the Defendants claiming no interest in the said lumber, the Defendants on 21st June, 1888, brought an interpleader action in the Chancery Division of the High Court of Justice in which the now Defendants were Plaintiffs, and the said Ross

RECORD. & Co., and Hurteau Brothers Defendants and in the said action the now Defendants delivered their statement of claim as Plaintiffs in the said action in the words and figures following:—

No. 3. Statement of Defence, delivered 7th Mar., 1893.—*continued.*

“ 1. The Plaintiffs under the name of W. C. Edwards & Co., are Lumber Manufacturers, carrying on business at Rockland in the Township of Clarence.

“ 2. The Defendant, the Honourable James Gibb Ross, carries on business as a Lumber Merchant, at the City of Quebec in the Province of Quebec, under the name of Ross & Co.

“ 3. The Defendants Napoleon Arthur Hurteau and Alceme Hurteau, carry on business as Lumber Merchants, at the City of Montreal in the Province of Quebec, under the name of N. A. Hurteau et Frère.

“ 4. The plaintiffs in or about the month of 1887, having about 4,212,308 feet of cull deals in their yard at Rockland, agreed to sell and did sell to the Defendants N. A. Hurteau et Frère the said quantity of deals, and in consideration of certain promissory notes for the price of said deals made and delivered by N. A. Hurteau et Frère to the plaintiffs, the said deals became the property of N. A. Hurteau et Frère.

“ 5. The said deals or a great portion thereof remained and now are in the possession of the Plaintiffs at their yards aforesaid. 20

“ 6. On 12th January, 1888, one E. H. Lemay acting as agent for Defendant N. A. Hurteau et Frère, addressed to Plaintiffs the following letter:

“ MONTREAL, January 12th, 1888.

“ Messrs. W. C. EDWARDS & Co.,

“ Rockland, Ont.

“ Gent.

“ I have this day sold to Wm. Little, Esq., the following lumber now at your yard to my order, 1,000,000 feet 3 in. M. C. deals 8—13; 493,590 feet 3 in. M. C. deals 14—16. I have given him an order on you for the delivery of same, which you will please accept, and in shipping this lumber to him you will do me a favor 30 by seeing that he is treated as well as myself. Your reply will oblige.

“ Yours truly,

“ (Sgd.) E. H. LEMAY.”

“ The within order is the one I mention as having been given to Little.

“ (Sgd.) E. H. LEMAY.

“ Please accept the within order, and return to me at once, as I wish to get the note on delivery of same.

“ (Sgd.) E. H. LEMAY.

“ MONTREAL, January 18th, 1888.

“ Messrs. W. C. EDWARDS & Co.,

“ Rockland, Ont.

“ Gent.

“ Please deliver to Wm Little, Esq., or order, the following lumber now in your yard to my order, viz:—

“ 1,000,000 feet B. M. 3 in. M. cull deals 8—13.

“ 493,590 feet B. M. 3 in. M. cull deals 14—16.

“ and oblige yours truly,

“ (Sgd.) E. H. LEMAY.

" 8. On the same day the Defendants N. A. Hurteau et Frère addressed the following letter to the Plaintiffs:—

" MONTREAL, 12th January, 1887.

" Messrs. W. C. Edwards & Co.,
" Rockland, Ont.

" Gentlemen,

" You will please rectify Mr. Lemay's order for one million feet 3 in. Mill culls 8—13 feet, and 493,590 feet 3 Mill culls 14—16 sold to Mr. Wm. Little F. O. B. of barges with option to draw them from the piles if he wants some during
10 " winter.

" Yours truly,

" (Sgd.) N. HURTEAU ET FRERE.

" 9. The Plaintiffs wrote across the above order " Accepted, W. C. Edwards & Co., January 20th, 1888," but the lumber mentioned in said order was not moved or separated from the rest of the said lumber of N. A. Hurteau et Frère.

" 10. Subsequent to the foregoing order William Little mentioned therein, addressed the following order to the plaintiffs:—

" Please hold the within mentioned quantity of deals subject to the order of Ross & Co., Quebec.

20 " Quebec, 28th February, 1888.

" (Sgd.) WM. LITTLE.

" 11. To which the plaintiffs replied in the words following: Will hold within deals subject to order of Messrs. Ross & Co., as above authorized.

" (Sgd.) W. C. EDWARDS & Co.,

" Rockland, March 15th, 1888.

" But the said lumber was not moved or separated from the quantity of lumber hereinbefore sold to N. A. Hurteau et Frère.

" 12. The Plaintiffs delivered to the Defendants Ross & Co., 96,975 feet portion of the lumber directed by the above order of William Little, to be delivered.

30 " 13. On or about 8th June, 1888, the Defendants N. A. Hurteau et Frère, alleging that William Little had become insolvent and had not paid for the said lumber, ordered to be delivered to him as aforesaid, by written order directed the Plaintiffs to stop delivery of any lumber to William Little, or to the Defendants Ross & Co., or to any one save to themselves, of the lumber purchased by them from the Plaintiffs, in the fourth paragraph herein mentioned.

" 14. At the same time the Defendants Ross & Co., required the Plaintiffs to deliver to him 1,396,615 feet of lumber, being the balance of the deals set forth in the order dated 12th January, 1888, made by N. A. Hurteau et Frère, upon the Plaintiffs in favor of William Little, and by William Little directed to be
40 " delivered to Ross & Co., as set forth in paragraphs 10 and 11 of this statement of claim.

" 15. The Plaintiffs have in their yard at Rockland aforesaid not separated from the lumber of N. A. Hurteau et Frère, the above named balance of 1,396,615 feet of lumber, in which they, the Plaintiffs, have no property nor to which do they profess to have any claim.

RECORD.

No. 3.
Statement of
Defence, deli-
vered 7th
Mar., 1893.—
continued.

RECORD.

No. 3.
Statement of
Defence, deli-
vered 7th
Mar., 1893.—
continued.

“ 16. The Defendants, N. A. Hurteau et Frère claim to be entitled to the said balance of 1,396,615 feet of lumber, and threaten to bring an action against the Plaintiffs for the value of the same in case the Plaintiffs fail to deliver the same to them.

“ 17. The Defendants Ross & Co., claim to be entitled to the said balance of 1,396,615 feet of lumber, and threaten to bring an action against the Plaintiffs for the value of the same in case the Plaintiffs fail to deliver the same to him, the Defendants Ross & Co.

“ 18. The Plaintiffs are not acting in collusion with any of the Defendants respecting the said lumber or the possession thereof. 10

“ 19. The said lumber is of a character that it will depreciate in value by exposure, and the price that can be obtained for the same will likely diminish if not sold without delay.

“ The Plaintiffs Claim

“ 1. That the lumber being the above named 1,396,615 feet be sold without delay, and the price obtained for the same be paid into Court.

“ 2. That the Defendants N. A. Hurteau et Frère on the one side and the Defendants Ross & Co. on the other side, be ordered to interplead regarding their respective claims to the said lumber or to the price thereof when sold.

“ 3. That the Defendants be respectively enjoined against bringing any action against the Plaintiffs respecting the said lumber or the delivery thereof. 20

“ 4. That it be declared that the Plaintiffs are entitled to be indemnified by N. A. Hurteau et Frère, or by Ross & Co., respecting the said lumber or the delivery thereof.

“ 5. That the plaintiffs be paid their costs of this action out of the money for which the said lumber is sold or by the Defendants or some one or more of them.”

and such proceedings were had and taken in the said action that thereafter on the 17th July, 1888, upon the consent of the said Ross & Co. and the said Hurteau Brothers, judgment in the said action was pronounced and entered in the words 30 and figures following :

“ This Court doth order and adjudge that the Plaintiffs be at liberty to set apart and apportion from their stock of lumber of the kind and quality mentioned in the Plaintiffs' Statement of Claim to the amount mentioned in the pleadings as being in question in this transaction, being 1,396,615 feet, and that the said lumber be sold forthwith with the approbation of William Marshall Matheson, Esquire, one of the Masters of the Supreme Court at Ottawa, to whom this matter is for these purposes hereby referred, and that the proceeds thereof be forthwith paid into Court to the credit of this matter, and the setting apart and apportionment of the lumber as aforesaid shall be without prejudice to the rights 40 of any of the parties hereto.

“ And this Court doth further order and adjudge that the Defendants do proceed to trial of an issue at the next sittings of this Court at Ottawa, in which the Honourable James Gibb Ross shall be Plaintiff, and Napoleon Arthur Hurteau and Alceme Hurteau shall be Defendants, and that the question to be tried in said issue shall be whether the Plaintiffs or Defendants in said issue are entitled to the lumber aforesaid or the proceeds thereof.

“And this Court doth further order and adjudge that the costs of the Plaintiffs herein, including the costs of the reference to said Master, be taxed and paid out of the proceeds of said lumber, so to be paid into Court as aforesaid. And this Court doth reserve further directions and the question of the rights of the Defendants as between themselves, and all other costs, until after the trial of said issue.”

RECORD.
No. 3.
Statement of
Defence, deli-
vered 7th
Mar., 1893.--
continued.

11. Thereafter, pursuant to the directions of the said judgment, the now Defendants set apart from the lumber in their mill yard, lumber of the kind and quality mentioned in the Statement of Claim in the said action, to the amount of 1,396,615 feet, and the same was sold with the approbation of the Master of the Supreme Court in the said judgment mentioned, and the proceeds of the said sale, after deducting the costs of the now Defendants, were duly paid into Court to the credit of the said action, and the matters set out in this paragraph performed and done by the Defendants in pursuance of the said judgment, pronounced and entered as aforesaid upon the consent of the said James Ross & Co., constitute the conversion in the 14th paragraph of the Statement of Claim mentioned.

Delivered the seventh day of March, 1893, by John Christie, of the City of Ottawa in the County of Carleton, Solicitor for the Defendants.

20

Joinder of Issue.

The Plaintiff joins issue upon the Defendants' Statement of Defence herein. Delivered this twenty-seventh day of March, A.D. 1893, by Alexander Ferguson, of the City of Ottawa, in the County of Carleton Solicitor for the Plaintiff.

No. 4.
Joinder of
Issue, deli-
vered 27th
March, 1893.

Evidence at Trial.

Ottawa, 25th April, 1893.

30 Before the Hon. Mr. Justice Meredith.

For the Plaintiff, Mr. McCarthy, Q.C., and Mr. Ferguson, Q. C.

For the Defendants, Mr. Shepley, Q. C., and Mr. Christie.

Counsel stated that a number of exhibits which had been filed in the former case had been lost in transmission, and they were now admitted as proved.

Mr. McCarthy filed Ex. 1, probate of the Will of the late Hon. J. G. Ross ; Ex. 2, letters of Administration to Mr. Hoskin in the Province of Ontario ; Exs. 3 and 4, Assignments by the Administrator to Frank Ross, the present plaintiff of the entire assets, including the one in question ; Ex. 5, Order by E. H. Lemay, dated 18th January, 1888 ; Ex. 5½, is endorsation upon Ex. 5 ; Ex. 6 also endorsement ; Ex. 7, endorsement dated March 15th.

JAMES GEGGIE, sworn, examined by Mr. McCarthy.

Q. You were in the employment of the late Hon. James Ross ? A. Yes.

Q. And he was carrying on business in the City of Quebec under the name of Ross & Co. ? A. Ross & Co., yes.

Q. His business was connected with lumber to some extent ? A. Yes.

No. 5.
Evidence of
James Geggie

RECORD.

No. 5.
Evidence of
James Geggie
—continued.

Q. And he was also in the habit of making advances and loaning money?

A. Yes.

Q. Did you know Mr. Little? A. I did.

Q. Do you remember the transaction between the firm of Ross & Co. and Little?

A. Yes.

Q. Had you to do with that firm from the first? A. I had

Q. And does your memory serve you to tell me when it was that Mr. Little applied to Mr. Ross for a loan without the papers, perhaps you cannot tell that?

A. I think it was at the end of February, 1888, I am not sure to the date.

Q. What took place, what security did Mr. Little offer and what money did Mr. Little want? ¹⁰

Q. Mr. Shepley.—This is subject to objection.

Witness—He asked Mr. Ross to advance him on some lumber that he had at Rockland.

Q. And did he produce any evidence of title? A. He produced an accepted order by Edwards & Co. in favor of Lemay.

Q. That was this order here, is it? A. I suppose that order (see Exs. 5 and 5½.)

Q. It is not in the condition in which it is now? A. No.

Q. In what condition was it at that time? A. It was accepted by W. C. Edwards, that was all. ²⁰

Q. Had it all that appears on the face of it? A. Yes.

Q. What would 8, 13, 14 and 16 mean? A. That was the lengths of lumber.

Q. What arrangement was made, he asked for an advance on the security of this lumber, did he ask for it in writing? A. No, it was verbal.

Q. And what was done? A. Mr. Ross said "If you get that order accepted I will give you the money."

Q. How much money did he ask for? A. \$7,500.

Mr. Shepley—That I object to. ³⁰

His Lordship—Yes, taken subject to the objection.

Mr. McCarthy.—Q. Mr. Ross said if he would get this order accepted he would let him have the \$7,500 he wanted, by whom? A. Little proposed to make over the order to Mr. Ross; Mr. Ross said "On your doing that I will give you the money."

Q. If what were done? A. If it were accepted by Edwards in favor of Ross.

Q. Then if Mr. Little obtained the acceptance of the transfer that he proposed to make of this order by Mr. Edwards then Mr. Ross would make him the advance? A. Yes. ⁴⁰

Q. Well, then, what was done upon that, was there anything done on that to have that acceptance obtained? A. Little gave us that order and we sent it to Edwards in writing by a letter.

Q. Where is that letter?

Mr. Shepley—We have a copy of it dated 10th March, 1888.

Mr. McCarthy.—Q. Did all this happen on the one day? A. No it was previous to that date that Little was in the office and applied.

- Q. How long previous to that, the arrangement was put in writing? RECORD.
A. Yes. No. 5.
- Q. And is this the arrangement as reduced to writing? A. Yes. Evidence of James Geggis
- Q. And that is the date? A. Yes, 28th February, that was the —continued.
date, and that was written by Mr. Ross.
- (Counsel reads document referred to, Ex. 8.)
- Q. Was that at the bottom written at the same time? A. Yes.
- Q. And that was signed by Little? A. Yes.
- Q. Then was there any advance made on that at that time? A.
10 Some days after that.
- Q. I mean at that time, and before this letter was written? A.
No, not at that time.
- Q. He left the order with you that he had the acceptance of and
you sent that in this letter to Edwards (see Ex. 9 here referred to);
that was written by yourself? A. Yes, that was written by me.
- Q. Then you got an answer to that did you? A. Yes.
(Reads answer dated 15th March, 1888.)
- Q. That was received, and did that return this order with this
acceptance by Edwards? A. Yes.
- 20 Q. Then did you make the advances? A. We did.
- Q. All in one sum? A. No, in different amounts.
(Mr. Ferguson here produces a statement of drafts.)
- Q. When is the first acceptance? A. I see the date is not on
it, the date of the acceptance is not on that draft.
- Q. Do you remember? A. Well, it would be three or four days after
that date.
- Q. Did you accept it before the 15th, you did not get it back from
Mr. Edwards before the 15th? A. Oh yes, the Bank of Montreal have
their stamp July 9th, it would be on that date. Little discounted these
30 drafts in Montreal, they came down here, it was received in Quebec on
the 9th July; we would accept it on the 10th or 11th.
- Q. That is only reasoning? A. That is only reasoning.
- Q. And apparently you declined to do anything till you wrote to
Mr. Edwards and you did not get an answer from Mr. Edwards till the
15th? A. Till the 15th.
- Q. Did you receive any of these drafts before you got Mr. Edwards' reply?
A. Well, I cannot tell you the date.
- Q. I want to know the fact? A. Well, I cannot tell you the fact.
- Q. There is another letter you wrote that may help your memory, do you
40 remember writing this letter of the 16th? A. Yes, that letter was written by
me.
- Q. That was on the 16th you wrote to Edwards (reads letter referred to)
Does that bring back anything to your recollection? A. No, it does not.
- Q. Would your bill-book not show you the dates? A. The bill-book
would show the dates on which we accepted the drafts.
(Bill-book here produced). The 8th March, was the first, they appear
correctly as the 8th, 12th, 13th, 15th, 17th; these are the dates on which they
were accepted.

RECORD.
 No. 5.
 Evidence of
 James Geggie
 —continued.

Q. When did you get back the document, when would this reach you, it had not reached you on the 16th? A. We received that on the 17th March.

His Lordship—What is the date of the receipt of the order of acceptance? Mr. McCarthy—17th March.

Witness—That would be received as the mail comes in the morning and we accept the drafts during the day.

Q. Well then, in the end you did get, I think, a portion of this lumber? A. Yes.

Q. On the 29th May? A. Yes.

Q. You sold to Lemay? A. It was sold by Little to Lemay and we¹⁰ gave him instructions to deliver it.

Q. That was on the 29th May, and did you get anything from Edwards on that, this is the answer to that, that is dated 4th June, that was the last delivery, that was all that you ever received? A. Yes.

Q. What happened next, you received a telegram apparently because this was the letter of the 9th June, after you got that telegram? A. No.

Q. Do you remember what it said? A. Little had sold Lemay the balance of the 493,000 feet of lumber.

Q. Tell us about the telegram please? A. The rest of this lumber we sold to Lemay and ordered it to be delivered, and they protested that they would²⁰ not deliver it.

Q. You did receive a telegram from Edwards & Co.? A. Yes.

Q. And that telegram was in substance what you stated here? A. Yes.

Q. That telegram was in substance that Hurteau had formerly forbidden the delivery of any of the deals sold by him to Little? A. Yes.

Q. Had you given any order prior to this for delivery? A. Yes; there was some order sent before the 11th June for the delivery of deals to Lemay.

Q. Mr. Shepley says that you got this telegram without any communication from you, it was not in response to anything, that Hurteau having forbade Mr. Edwards to deliver the lumber he sent you a telegram to that effect; can you tell³⁰ whether that is so? A. Yes, that is so.

Q. Then you received a telegram from Mr. Edwards to the effect that Hurteau had forbidden the delivery of any of the deals sold by you to Little?

A. Yes.

(Counsel here reads letter Ex. 17.)

Q. Did you get any reply to that? A. No.

Q. Then you wrote this letter on the 15th June apparently? A. Yes.

Q. What was the meaning of this, what was the deal between you and Lemay?

Mr. Shepley—I object to that.

Mr. McCarthy—It is not important if it is objected to; we are not claiming⁴⁰ any damages and it does not make a bit of difference. Then you received this reply from Mr. Edwards, June 18th; what does that refer to, Mr. Edwards writes to say that he returned you your order, what order did you give to Lemay?

A. We had given a second order for the balance of the deals left out of the 493,000.

Q. Where is that order now? A. That order is with Lemay.

Q. You did give Mr. Lemay an order for the balance of the 493,000 feet? A. Yes.

Q. And that is the order referred to in this letter of the 18th? A. Yes.

Q. That is the way the account stands is it not?

Mr. Shepley—A very brief reference to the Master will suffice in case the plaintiff becomes entitled to anything.

Mr. McCarthy—There is only one item in it. We have only received that one quantity of lumber. We are only claiming the amount of our advances.

Mr. Shepley—It is probably all right, but I do not like to make the admission.

10 Mr. McCarthy—We do not want a reference in the matter.

Witness—This is the account after giving credit for the amount of deals received as between Ross and Lemay.

Q. As to the value of the deals how about that, are the deals worth more than this?

Mr. Shepley—I think not, I do not think you need trouble about this. (See statement marked Ex. 21 here referred to.)

Cross-examination.

20 Mr. Shepley—Q. How long had the firm of Ross & Co. been dealing with Lemay? A. For some five or six years previous to that.

Q. What was the nature of the dealings, were you making advances to him from time to time. A. We were.

Q. Can you give me an approximate idea of how much he was in your debt on the 28th February, 1888, apart from this transaction? A. I cannot from memory, I have a register here before the 28th February, 1888, \$14,167.

Q. In other words the firm of Ross & Co. were carrying him? A. We were making him advances, we were carrying him.

Q. And did you hold securities in respect to this large indebtedness? A. We did.

30 Q. What was his condition at that time Mr. Geggie? A. As far as we knew he was all right.

Mr. McCarthy—I do not see the relevancy of this at all.

His Lordship—I think all the circumstances may be taken into consideration in questions of this kind.

Witness—Besides these balances in 1887 we were advancing him that year, 1888, and up to the 27th February, I see he had \$15,878 during that winter from us.

Q. Would that be in addition to the 14? A. Yes.

Q. So that in round figures he owed you \$30,000? A. He did.

40 Q. And when was it when he went to smash? A. The month of June.

Q. About three months after the dealing? A. Yes.

Q. Well usually you know about coming events, they cast their shadows before in lumber matters the same as in other matters. A. Sometimes.

His Lordship—The date of the failure? A. I think the 6th June; between the 28th February and 6th June, we advanced him still further to the extent of \$6,000, that was for logs he was cutting.

RECORD.

No. 5.
Evidence of
James Geggie
—continued.

Mr. Shepley—Q. The security you got for these fresh advances inured, so far as there was a margin, in respect to the old indebtedness? A. No.

Q. Supposing you advanced him \$5,000 and got \$10,000? A. No, sir.

Q. That is to say, that whenever there was a margin in any of the securities you took that margin, inured to your benefit in respect to the old drafts? A. It inured to our benefit on the advances we were then giving him.

Q. If there was a margin who got that, on the old advances, did you get it or pay it to him? A. We paid it to him.

Q. You never made any claim in respect to any security you held in respect to any other advances? A. No, sir.

Q. Show me anywhere you paid him any money out of these margins, he owing you \$30,000 and you paid him any margin? A. We cannot show it in this ledger.

His Lordship—Why would it not be so if the advances were in respect to one transaction?

Mr. Shepley—It is not so in my experience. Have you told us Mr. Geggie all that took place between Little and your firm when he came there in February for further advances, what else did he bring with him besides this order of Lemay's upon Edwards? A. In connection with that advance.

Q. What papers did he bring you? A. Nothing else in connection with the advances that he was then asking for.

Q. You were examined before and I understand from your previous examination that you stated that the agreement between Hurteau and Little was produced by you? A. No, sir, I do not think I said that, I do not think we knew Hurteau at all in the matter.

Q. (Reading from examination) "Q. At the time that Mr. Little came to your house in Quebec did he show you the order of Mr. Lemay upon Mr. Edwards for the delivery to him? A. Yes. Q. And he also showed you the agreement that has already been filed and the paper of January 18th, 1888, from Little to Edwards to deliver this lumber specifying it? A. He did;" is that right? A. Yes, it is.

Q. This is the document I mean? A. Yes, that was Little and Lemay, it was not Hurteau.

Q. You knew that Lemay was Hurteau's agent? A. No, we did not.

Q. You did not know that he was a broker in the transaction? A. No, sir.

Q. This agreement is the 12th January, 1888, between Little and Lemay; then you were made aware that the note provided for by Little had been given and it was outstanding? A. Yes.

Q. You knew then, to make a long story short, you knew that Little was a purchaser who had not paid his purchase money? A. Yes.

Q. And you were dealing with him in these deals upon that basis? A. Not exactly.

Q. With that knowledge? A. With that knowledge.

Q. Then in the agreement of the 28th February, I do not see anything in that agreement on the subject of getting an acceptance from Mr. Edwards of this order; you told my learned friend that Mr. Ross' agreement was that if the

security which Little held, which was the order from Lemay accepted by Edwards, was transferred, he would make the advances, but when reduced to writing nothing was said about getting the acceptance from Edwards? A. I think that conveys that idea.

RECORD.
No. 5.
Evidence of
James Geggie
—continued.

Q. We will see "Mr. Wm. Little proposes to draw on Ross & Co. to the extent of \$7,500 to be paid within four months from this date and as collateral security for the said advances pledges Edwards & Co., Rockland, Ont., warehouse receipt for 1,493,590 feet cull pine deals;" that is what you think covers it; how does that refer to it? A. It refers to it by giving the very quantity of lumber.

10 Q. That was the document referred to in this? A. Yes.

Q. But you say that prior to this document being signed there was some conversation about getting a further acknowledgment from Edwards? A. No, I do not say that.

Q. There was nothing said before this document was signed about getting a further acceptance from Edwards, the document of the 28th February? A. Well, Little asked Mr. Ross to give this money and Ross said "If you give an accepted order for these deals I will give you the money," and Little produced this acceptance in favor of Little, Lemay's order, and gave us that accepted order in his favor, transferred it to Ross & Co., put his endorsement on the back and
20 put that in our possession and it was on getting possession of that that these advances were made.

Q. But there was nothing said about getting a further acceptance from Edwards in your favor? A. Little had transferred that to us.

Q. But there was nothing said about getting Edwards to acknowledge the transfer from Little to you? A. Certainly there was, we would not advance without getting the transfer.

Q. But you did? A. Certainly we did, because we expected to get it, we trusted both Little and Edwards in the matter.

Q. After all that, when you say it was a matter of expectation rather than
30 a matter of contract that you should get anything from Edwards in addition to what Little brought you—? A. Well, Little brought us that Ex. 5 and 5½, and it was transferred the same day and he wrote on the back Ex. 6.

Q. And on that you signed this document dated 28th February? A. Yes.

Q. And then you agreed to make the advances? A. Yes, and we made the advances.

Q. You had made a substantial portion of the advances before you sent this down to Edwards? A. Yes, we had made some of it.

Q. Made \$2,500? A. We had made some of it.

Q. \$2,500 you had made before you even sent it down to Edwards, and
40 advanced it all except the last draft before you got it back from Edwards? A. Yes.

Q. There was some delay in getting it back? A. Yes.

Q. And if you had not got this back before the acceptance came in you would have accepted the draft all the same? A. I suppose we would.

Q. Then what took place after the refusal of Hurteau to allow Edwards to deliver, Edwards brought an action didn't he?

Mr. McCarthy—We will admit that. Mr. Geggie knows nothing at all about that, there is no dispute about that.

RECORD.
 No. 5.
 Evidence of
 James Geggie
 —continued.

Mr. Shepley—Do you know that an action was brought by Edwards for an interpleader between Ross and Hurteau? A. I know there were disputes in the matter.

Q. And the result was that an order was made directing the lumber—

Mr. McCarthy—That all appears by the order; we have agreed to admit all the papers.

Mr. Shepley—I want to put them in for the purpose of asking questions of this witness.

Mr. McCarthy—You may assume they are in for that purpose.

Mr. McCarthy—Q. This is the paper you say you have seen in Mr. Little's 10 possession? A. Yes.

Q. And you did not know Mr. Hurteau, you had never heard of him?

A. I had never heard of him.

Q. But Mr. Little did bring you this? A. Yes.

(Reads document referred to.)

Q. What you saw was this document with Mr. Edwards' acceptance?

A. Yes.

Q. The order on Mr. Edwards already referred to? A. Yes.

Q. You have proved the letter from Mr. Edwards in which he stated that he would not acknowledge the order or recognize the order that Mr. Ross had given 20 in favor of Lemay, that is the balance of the \$493,000 feet. A. Yes.

Q. Was there anything further done before the proceedings commenced, did anything further take place? A. I think not.

Q. And then the proceedings my learned friend has referred to followed?

A. Followed.

Mr. McCarthy—I just put in, it is admitted, the formal demand on the 11th November, 1891, and the reply appears on the face of this paper also.

Mr. Shepley—I am not quite sure that that we admit that reply; no, we cannot admit that.

Mr. McCarthy—You have admitted that; I put it in at all events. That 30 is the case, your Lordship.

Mr. Shepley—I submit my learned friend has not made out any case here.

His Lordship—Are you willing to rest it here?

Mr. Shepley—I would like to consult in regard to that. I was going to suggest to your Lordship that there is no case made out. I am not quite sure if your Lordship rules against my motion whether I would call evidence; if your Lordship would prefer not having the motion made?

His Lordship—No, that is a risk that you must take. If I hold against you you may never get any evidence in.

Mr. Shepley—If your Lordship is with me I would like your Lordship to so 40 rule. But if your Lordship should be against me I must elect.

His Lordship—You must elect now; what I mean to say is this, that if I uphold your objection now no evidence will be taken here and you know that if it go to appeal you may not be granted a new trial in order to get in evidence.

Mr. Shepley—If on the other hand your Lordship was against my motion I would have an opportunity of putting in evidence. Then I put in my Lord, the other papers mentioned in this examination as follows, perhaps it is just as convenient for me to put in the printed case.

Mr. McCarthy—No need to encumber it in that way.

Mr. Shepley—Then I put in the statement of claim in the case of Edwards v. Ross and Hurteau and the judgment in the case dated 17th July, 1888; I put in the interpleader issue dated 5th September, 1888. I put in the report of the Master on the sale of the lumber under the judgment in that action, dated 8th August, 1888. I put in the formal judgment entered in the trial of the interpleader issue between Ross and Hurteau that judgment being dated 30th August, 1889. I put in two orders made in the trial of the interpleader issue dated 13th January, 1891, and 16th January, 1891, and directing payment of the money and
10 proceeds of the sale out of Court. Then I put in the letter from Hurteau Bros., solicitors to us of the 13th June, 1888, forbidding us to deliver.

Mr. McCarthy—That will be taken subject to the objection.

Mr. Shepley—And I put in the depositions in the case of Ross v. Hurteau, the interpleader of Ross v Hurteau, of Mr. Geggie, taken for discovery.

Mr. McCarthy—What is the use of that, we have had Mr. Geggie here and it was to avoid that we called Geggie; you have asked Geggie everything.

Mr. Shepley—I think so, it had better go in pursuant to the admission.

Mr. McCarthy—We agreed to admit the depositions of the witness, but when the witness is produced the depositions cannot be read; I take it that the
20 presence of the witness supersedes that examination.

His Lordship—It would be more satisfactory to have the whole of the testimony of the witness taken now.

Mr. McCarthy—My learned friend can call him back and cross-examine him.

His Lordship—If there be nothing in the agreement that gives you the right to put it in now I should reject it. (Counsel reads consent.)

Mr. McCarthy—Now he has been called and I think that supersedes it—

His Lordship—The agreement goes further than I thought it did. You may now put that in as evidence subject to the objection. I base that entirely upon
30 the agreement which gives you the right.

Mr. McCarthy—I do not in the least object to it going in only that we have examined Mr. Geggie; instead of the appeal book being shortened it is extended; I ask my learned friend to consider it again and put in certain portions.

Mr. Shepley—And the evidence of Hurteau also taken.

Mr. McCarthy—That I also object is inadmissible.

Mr. Shepley—That I suppose depends on what it is when it is read.

Mr. McCarthy—There may be parts, but certainly it is not all admissible.

His Lordship—Now Mr. Shepley, if you will read the portions you think
admissible.

40 Mr. Shepley—Page 31 from the 7th line to the 17th inclusive. (Counsel reads extract as indicated.)

Mr. McCarthy—He has said that he knew the notes were current, I do not know that he said the amount and I do not know that that is important, you had better call him back.

Mr. Shepley—That is all I desire to read from the depositions of Geggie.

Mr. McCarthy—I will have to call him back.

RECORD. J. GEGGIE, recalled by Mr. McCarthy.

No. 5.
Evidence of
James Geggie
—continued.

Q. You stated I see in your examination Mr. Geggie that you knew at the time that Mr. Little applied to Mr. Ross for this advance that Mr. Little had given a note for this lumber which was then current? A. Yes

Q. And you also stated that you knew that note was for something over \$10,000? A. Yes.

Q. And that you knew that it had not been paid, that the note in point of fact was not yet due; how did you get that knowledge? A. From the documents and the examination of the invoices.

Q. Had you any knowledge beyond what these papers showed, had you any¹⁰ knowledge except what appears on the face of these documents as to the note? A. I think not.

Q. And where did you get then the \$10,000 which you knew the note was for? A. There was an invoice that we had showed us at the same time.

Q. Where is the invoice?

Mr. Shepley—That goes in subject to the former objection.

Mr. McCarthy—Q. I am asking how he knew; he knew from these invoices—you knew from these invoices which have not been put in the amount of the note? A. Yes.

Q. Are these the two papers Mr. Little showed dated 12th January, 1888, 20 Ex. 22 and Ex. 32?

Mr. Shepley—It is noted that that is subject to my objection.

Cross-examination :

Mr. Shepley—Q. I suppose these matters were made the subject of discussion between you and Little? A. Yes.

Q. There was a verbal explanation by him of these documents and what the transaction had been? A. I cannot say.

Q. He explained to you that he had got this lumber, had not paid for it, that his note was outstanding, he explained these matters referred to in these³⁰ papers? A. He handed us the papers and they explained themselves.

Q. Was there any discussion? A. I do not know; part of the transaction with Mr. Little was when I was not with Mr. Ross, so I cannot say from my own knowledge.

Q. Have you been telling us anything this morning that is not of your own knowledge? A. I think not.

Q. Were you present when the matter was discussed with Little? A. I was.

Q. And these deals were spoken of, and they having been bought from Lemay? A. Yes. 40

Q. And his having given a note for it? A. Yes.

Q. So it was in your presence the subject of verbal explanation? A. I was not in the office all the time, but while I was there I heard the conversation.

Q. You heard the conversation in which Lemay gave an explanation of these matters regarding the deals between him and Lemay? A. Yes.

Q. And what you mean to say is that from the documents themselves coupled with Little's explanation you arrived at the knowledge you had of the transaction? A. Yes.

Mr. McCarthy—Q. Did Mr. Little explain anything more than the documents themselves, and if so what? A. I do not think he did. RECORD.
—
No. 5.

Q. I suppose then it would amount to this, that he identified this particular lumber as the lumber referred to in the papers? A. The lumber mentioned in these documents. Evidence of
James Geggie
—continued.

Mr. Shepley proposed to read the examination of Napoleon A. Hurteau.

Mr. McCarthy—Would it not be better to put it in as an exhibit?

His Lordship—If it can be identified as Geggie's was by the line and page.

Mr. Shepley—I commence at page 40, also page 41.

10 Mr. McCarthy—It is all subject to the objection.

Mr Shepley reads page 42; page 45, commencing with line 29 and ending with line 7 on page 46. (Counsel also reads letter from the solicitors for Hurteau Bros. to Edwards).

WM. C. EDWARDS, sworn, examined by Mr. Shepley.

Q. You are a member of the defendant firm here? A. I am. No. 6.
Evidence
of Wm. C.
Edwards.

Q. And what relation do you bear to the business, are you the managing man? A. I am managing partner of the business.

20 Q. You remember the deals which are the subject of this action, Mr. Edwards? A. I do.

Q. And you remember the receipt of the order from Mr. Lemay in favor of Mr. Little which has been put in here, do you remember the receipt of that, that is Ex. 5? A. Yes, I recollect this document.

Q. And do you remember getting this letter from Hurteau Bros., dated 12th January, I see it is marked 1887, and over it is 8? A. Yes.

Q. Does that relate to the same lumber? A. Yes.

30 Q. Now Mr. Edwards had you any knowledge apart from this document, had you any knowledge of the transaction between Hurteau and Little or between Lemay and Little? A. No, I had not, except that I received a letter from Hurteau asking me.

Mr. McCarthy—If there is a letter let him read that.

Witness—Yes, I think that is all right. (Reading letter dated 12th January, 1888.)

Mr. McCarthy—That is do you “rectify?”

Witness—I understood that to mean “ratify.”

Mr. Shepley—Q. Then I understand you to say you had no knowledge otherwise or to any greater extent as to what the deal had been between these parties and Little? A. No, I had no knowledge whatever.

40 Q. Then you got the letter which has been put in here from Ross & Co., enclosing the transfer or order, in fact enclosing back to you this document Ex. 5 with the first indorsement upon it? A. Yes.

Q. Now had you any knowledge of the transaction between Little and Ross & Co., beyond what that document showed you? A. None whatever.

Mr. McCarthy—Q. Of course he had, he had the letter enclosing it. It is not pretended that there is anything except the letter; that was the letter enclosing this dated 10th March? A. I had no further knowledge than what these documents gave me.

RECORD.
No. 6.
Evidence of
Wm. C.
Edwards—
continued.

Mr. Shepley—Q. Then you remember getting the document that has been put in signed by Hurteau's solicitors forbidding you to make further delivery?

A. Yes.

Q. Did you then ascertain anything further regarding these matters?

A. I think about that time I heard that these deals had not been paid for by Little and that the note was still current.

Cross-examination :

Mr. McCarthy—Q. You had sold these deals Mr. Edwards to Mr. Hurteau? A. Yes.

Q. And were they all cull deals that you had at the time? A. They were all the cull deals. 10

Q. Was that the culls for the particular note or more than that note? A. The residue of that note.

Q. And how did you ascertain the quantity when you made the sale to Little or Hurteau? A. Well, our stock-book at the close of the season showed the quantity.

Q. How were these deals piled, the deals were all of the same quality? A. Yes.

Q. Then they varied in length? A. Yes.

Q. What were the lengths do you remember? A. Well the lengths ran from 8, from 7 or 8 to 16 feet. 20

Q. From 8 to 13 and 14 and 16? A. Yes, that would be right.

Q. How were they piled, according to their lengths? A. No; the deals from 13 feet and under are piled together and those of 14 and 16 feet were piled together.

Q. How many piles had you of deals? A. I could not tell you.

Q. Would there be more than two? A. Yes, there would be some hundreds of piles; there would be something over 400 piles.

Q. That would be how much in the pile? A. Well, I should say 12,000 to 13,000 feet in a pile. 30

Q. Would there be more feet in a pile of the long kinds? A. Yes.

Q. All the deals would be about the same, occupy the same space of ground? A. Except that the long deals would occupy a longer space.

Q. And the shorter deals would be about in quantity? A. Perhaps from 10,000, between 10,000 and 12,000.

Q. And the larger? A. I should say from 12,000 to 14,000.

Q. Altogether about 400 piles? A. Yes.

Q. Were they numbered or distinguished in any way? A. Each pile is numbered.

Q. Had you the quantity in your book showing the quantity in each pile? A. The lumber book shows each pile, the number of pieces and contents. 40

Q. Then you got this order from Mr. Little on the 12th January, "Please deliver to Samuel Little, Esq." (reads order) you say you complied with that order speaking as to the million feet? A. When the time of shipment arrived we should ship the million feet.

Q. Speaking in round numbers that would take about how many piles? A. Take something over 100 piles or about 100 or a little less than 100 of that quality.

Q. Then in the same way with the long piles, how many piles would that

take, 493,000, that would take about 38 piles? A. Yes; however, it is never done in that way. RECORD.

Q. That would be the result? A. Yes; some culling is always done in shipping. I mean this, that in selling any quantity of lumber it is always found in shipping that some pieces may have changed to some extent, so that there has to be a slight re-inspection in shipping so as to take out any pieces found not coming up to the quality required in the contract. No. 6.
Evidence of
Wm. C.
Edwards—
continued.

Q. This did not require any inspection, it is culls? A. Well, culls go through the same scrutiny with others.

10 Q. You might not have been able to comply with the quantity? A. Oh, no; you refer now to the total quantity of lumber?

Q. Yes? A. It is always the case that we have, to some extent, a discrepancy, but the discrepancy is always made up or settled for.

Q. There would be a slight discrepancy to some extent which might run under or prove in excess? A. Except there was a slight error owing to a change in the stuff it has to be made good by having to answer to the contract.

Q. However, I should think if it was all right when you sold it you were not responsible for what happened afterwards? A. Well, we might not be responsible but that is the custom of the trade.

20 Q. Supposing Mr. Little had come and asked you before any of this trouble had arisen for his lumber or bill, what would you have done, you accepted the order and made yourself responsible for it? A. I never felt that I had made myself responsible further than complying with the request of the parties concerned.

Q. Supposing he had come with that order before there was any trouble and asked for his bill what would you have done? A. We would have delivered the deals.

30 Q. What would you have done? A. I cannot tell you what special deals we would have delivered, but we would have shipped the quantity out of the whole.

Q. Is it any simple rule, or is it simply a matter of chance, would it be the deals nearest the waters edge? A. In what sense.

Q. An order is given to Mr. Little for this quantity, 1,000,000 feet of board measure which you accepted, now he goes with that and says Mr. Edwards, I want my million feet? A. Yes.

Q. How would you have filled and discharged yourself? A. You asked me if I would take the deals nearest the waters edge or ship simply the quantity from any of these piles?

40 Q. Now supposing that Mr. Lemay or Mr. Hurteau had come and asked for the residue what would you have done? A. We would have shipped them.

Q. Supposing he had given you an order to hold and the order to Little was out, and that left still a balance in his favor, supposing he had given his order, they had come in, how would you have satisfied their different demands? A. Well, of course it is something that could not occur, but if it did occur.

Q. Why now, surely it could have occurred; explain how it could not have occurred? A. In the ordinary course of business it would not occur.

Q. Why not? A. Because these men in buying large quantities of lumber at that time did not ship the whole block of lumber at one time.

RECORD.

No. 6.
Evidence of
Wm. C. Ed-
wards—con-
tinued.

- Q. I suppose this lumber went by water? A. Yes.
- Q. You are a business man? A. Yes.
- Q. You signed your name to that? A. Yes.
- Q. Gave that to Mr. Little? A. Yes.
- Q. And you knew Mr. Little had a right to come to you and ask you for that lumber? A. Yes.
- Q. And you say that Mr. Hurteau had a right to come and ask for what he did not give an order for? A. Yes.
- Q. Supposing these parties came and asked for a part, not the whole of their order, what would you have done? A. We would have gone on shipping 10 to both.
- Q. Supposing Hurteau had come and asked for the whole would you have given him the whole? A. No.
- Q. Why not? A. We certainly would not give the whole as he had already ordered us,—unless he ordered us not to deliver to the other party.
- Q. Supposing he had given an order to hold after this order was outstanding in Little's favor you would not have given us the whole? A. If the order was to ship, the order was then not to ship, we would have obeyed his order.
- Q. Notwithstanding you had given this to Little? A. Yes.
- Q. Notwithstanding you had given Mr. Little this order or this acknowledge- 20 ment that you held the lumber from him, you say if Mr. Hurteau had come and demanded the whole of that lumber and said that he had countermanded that order you would have given all that to Hurteau? A. Yes; we did not accept the order as entering into any responsibility on behalf of ourselves.
- His Lordship—Just listen to Mr. McCarthy's question.
- Mr. McCarthy—Q. If Mr. Hurteau had come to you after this order of the 12th January had been accepted by you as it was and said to you, "Now Mr. Edwards we want all that lumber notwithstanding the order you have given to Little," what would you have done? A. If Mr. Hurteau after ordering us to deliver ordered us not to deliver we certainly would not deliver.
- Q. That is not my question; I say if Mr. Hurteau had come after you had 30 accepted this order for a part and demanded the whole what would you have done? A. If Mr.—
- Q. Do not qualify the question; if Mr. Hurteau had come after the 12th January and after you had accepted this order for a part and demanded from you the whole of that lumber what would you have done? A. I would certainly have made some enquiry into it.
- Q. You would not have recognized his right? A. I would certainly consider his order not to deliver.
- Q. Supposing he asked you to deliver to him would you have done so? 40 A. Would I have delivered to Mr. Hurteau?
- Q. Yes? A. I certainly would not without making some enquiry into the matter.
- Q. Then there was no difficulty at any time as I understand you in you delivering to Mr. Little, no physical difficulty in your delivering to Mr. Little, his quantity of lumber. You could have gone on pile by pile and there would never have been any necessity to split or take a portion of any but the one pile?
- A. Not till you arrived at the last.

Q. You could have gone on for instance with 97 or 98 piles of the shorter lengths and gone on with 35 or 36 of the longer lengths and it would have been only at the last that there would have been any separation of the pile required?

A. Yes.

Q. When you got this last letter from Mr. Ross or about that time, 29th May, on the 11th June, you telegraphed something to Mr. Ross and Mr. Ross answers you and says "We have your telegram, etc.;" tell me what you got from Hurteau about that, was it this document from his solicitors? A. Yes, it was.

Q. That was the document of the 13th June, (reads paper referred to); 10 that could not have been the document referred to here because this is dated 13th June, apparently, whereas you telegraph on the 11th June? A. Beg your pardon, Hurteau had forbidden us verbally before we received this formally.

Q. Who was it that forbade you? A. The senior of the firm, I have forgotten his name.

Q. And he had forbidden you to do what? A. To deliver any lumber.

Q. Did you remember at the time that Mr. Lemay had presented the order from Mr. Ross for lumber? A. Yes.

Q. And it was in reference to that that you telegraphed to Mr. Ross; did you remember that order that Mr. Lemay presented, did you remember the fact 20 that he had presented an order from Mr. Ross? A. There is no doubt about his having presented the order, I haven't a clear recollection.

Q. The result Mr. Edwards is this, that on account of the verbal notification you received from Hurteau Bros. and the formal notice you received from their solicitors you determined to refuse to recognize Mr. Ross' right to get this? A. I determined to refuse to recognize the right of either.

Q. But at all events so far as Ross & Co. are concerned you determined to refuse to recognize their right; on what ground did you do so, why did you refuse to, having formally accepted Ross' authority, why did you refuse to recognize it? A. It was a matter in which we had no personal interest; we were directed by 30 Hurteau to deliver in the first instance and he afterwards served us with notice not to deliver and Mr. Ross threatened us with action if we did not deliver.

Q. Did you not do everything you were told to by Mr. Hurteau? When you accepted the order in favor of Little did you not do it at the request of Hurteau? A. Yes.

Q. That gave Mr. Little some rights that you recognized? A. I do not know how you mean.

Re-examination :

Mr. Shepley—Q. When you say that you refused to recognize the right of 40 either party, what do you mean by that? A. I mean by that that there appeared to be a conflicting interest and I decided to leave it to the interested parties to fight it out.

Q. You determined therefore to bring a suit? A. Yes.

Q. And what means did you take? A. On the advice of my solicitor an interpleader suit was instituted and the two parties were invited into court.

Q. I am not quite clear that what you said was clearly understood; the quantity of lumber that was sold by you to Hurteau was all you had in your yard? A. Not all we had in our yard.

RECORD.

Q. Not all the deals? A. Not all the deals, but all of that quality.

Q. Do you remember the quantity you sold to Hurteau? A. I do not as a matter of fact, but it was about four millions.

Q. And the quantity that Hurteau sold to Little was a smaller quantity?

A. Yes.

Mr. McCarthy—Q. Perhaps you can tell me in the meantime, you were a lumberman at that time? A. Yes.

Q. And you had a lumber yard of course? A. Yes.

Q. And this lumber was in your lumber yard? A. Yes.

Q. And when you sold it was left there, was there any agreement how long it was to remain? A. No.

Q. But you agreed to allow it to remain? A. Yes; as far as that is concerned lumber is never shipped from our place in the winter time.

Q. Is it a common thing for you to store it up at all in the winter?

A. It is in our yard, and we store it in this way.

Q. And you gave an acknowledgment that you held the lumber for plaintiffs? A. In selling we give an invoice of lumber; that is what we never give, one of these warehouse receipts, sir.

This closed the evidence in the case.

EXHIBITS.

20

(Exhibits Nos. 1, 2, 3, 4, 11, 12, 13, 14 and 15, are omitted from this book by consent, and are to be produced and referred to if necessary on the argument.)

(Exhibit No. 1.)—Probate of the Will of the late Honourable Jas. G. Ross, granted by the Superior Court for Lower Canada, District of Quebec, to the Plaintiff, dated 11th November, 1889.

No. 7.
Probate of Will of late Hon. J. G. Ross, dated 10th Nov., 1889.

(Exhibit No. 2.)—Letters of administration, with the Will annexed, granted by the Surrogate Court for the County of Simcoe, to John Hoskin, dated 7th June, 1890.

No. 8.
Letters of administration, with will annexed, dated 7th June, 1890.

(Exhibit No. 3.)—Assignment from John Hoskin to Frank Ross, of the Ontario assets, including the claim sued for, dated 30th June, 1890.

No. 9.
Assignment of Ontario assets, dated 30th June, 1890.

(Exhibit No. 4.)—Assignment from John Hoskin to Frank Ross, of the Ontario assets, including the claim sued for, dated 30th September, 1891.

No. 10.
2nd Assignment of Ontario assets, dated 30th Sept., 1891.

(Exhibit No. 5.)—Exhibit No. 5½ the acceptance endorsed across.

Messrs. W. C. EDWARDS & Co.,
Rockland, Ont.
Gent.

MONTREAL, January 18th, 1888.

Please deliver to Wm. Little, Esq., of order, the following lumber in your yard to my order, viz:—

- 1,000,000 feet B. M. 3 inch M. cull deals 8—13
- 493,590 feet B. M. 3 inch M. cull deals 14—16

and oblige, yours truly,

(Sgd.) E. H. LEMAY.

10

RECORD.

No. 11
Order of E.
H. Lemay on
Wm. C. Ed-
wards, dated
18th Jan.,
1888, and ac-
ceptance of
same, dated
20th Jan.,
1888.

Jan. 21st, 1888
W. C. EDWARDS
Accepted

(Exhibit No. 6.)—Endorsed on No. 5.

Please hold the within mentioned quantity of deals subject to the order of Ross & Co., Quebec.

Quebec, 28th February, 1888.

(Sgd.) WM. LITTLE.

No. 12.
Order of Wm.
Little on W.
C. Edwards
& Co., dated
28th Feb.,
1888.

(Exhibit No. 7.)—Endorsed on No. 5.

Will hold within deals subject to order of Messrs. Ross & Co. as above authorized.

Rockland, March 15th, 1888.

(Sgd.) W. C. EDWARDS & Co.

No. 13.
Acceptance
of same, dated
15th March,
1888.

20

(Exhibit No. 8.)

QUEBEC, 28th February, 1888.

Mr. Wm. Little proposes to draw on Ross & Co., to the extent of (\$7,500) seven thousand five hundred dollars, to be paid within four months from this date, and as collateral security for the said advances, pledges Edwards & Co., Rockland, Ont., warehouse receipt for 1,493,590 feet cull pine deals: It being agreed and understood that the whole advance with a commission of 2½ per cent. and any interest thereon at the rate of 7 per cent. per annum, be paid as above stated, otherwise Ross & Co., shall have full power to sell the deals or any portion of them at the best price they can get, and credit Mr. Little with any surplus there may be or collect from him any loss.

“(Sgd.) W. LITTLE.”

No. 14.
Agreement
between Wm.
Little and
Ross & Co.,
dated 28th
Feb., 1888.

30

Mr. Little will send fire policy, insured in the Guardian Co.

RECORD.

(Exhibit No. 9.)

QUEBEC, 10th March, 1888.

No. 15.
Letter, Ross
& Co., to W.
C. Edwards
& Co., dated
10th March,
1888.

Messrs. W. C. Edwards & Co.,
Rockland, Ont.

Gentlemen,

We enclose an order accepted by you holding

1,000,000 ft. B. M. 3 in. M. cull deals 8—13

493,590 do 14—16

subject to the order of Wm. Little. Mr. Little has transferred the deals to us as
you will see by his endorsement. Please accept this transfer and return us the
order. 10

Yours truly,

(Sgd.)

Ross & Co.,

P. J. G.

No. 16.
Letter, W. C.
Edwards &
Co. to Ross
& Co., dated
15th March,
1888.

(Exhibit No. 10.)

ROCKLAND, Ont., March 15th, 1888.

Messrs. Ross & Co.,

Quebec, P.Q.

Dear Sirs,

We have accepted transfer of cull deals from Mr. Little to yourselves, and beg
to return you the document. You doubtless are aware that we are not the insurers
of these deals. Mr. Little attended to it himself. 20

Yours truly,

(Sgd.)

W. C. EDWARDS & Co.

Insured for \$11,000, we have policy.

No. 17.
Draft for
\$2,500, dated
5th March,
1888.

(Exhibit No. 11.)—Draft of Wm. Little on Ross & Co. for \$2,500, dated 5th
March, 1888.

No. 18.
Draft for
\$1,000, dated
8th March,
1888.

(Exhibit No. 12.)—Draft of Wm. Little on Ross & Co. for \$1,000, dated 8th
March, 1888.

No. 19.
Draft for
\$1,750, dated
9th March,
1888.

(Exhibit No. 13.)—Draft of Wm. Little on Ross & Co. for \$1,750, dated 9th
March, 1888.

No. 20.
Draft for
\$500, dated
12th March,
1888.

(Exhibit No. 14.)—Draft of Wm. Little on Ross & Co. for \$500, dated 12th
March, 1888. 30

No. 21.
Draft for
\$1,750, dated
14th March,
1888.

(Exhibit No. 15.)—Draft of Wm. Little on Ross & Co. for \$1,750, dated 14th
March, 1888.

(Exhibit No. 16.)
Messrs. W. C. Edwards & Co.,
Rockland, Ont.

QUEBEC, 29th May, 1888.

RECORD.

Exhibits.

Dear Sirs,

We telegraphed you to-day to deliver E. H. Lemay 150,000 feet, 3 in. cull deals 14 to 16 feet, to finish loading a barge, and we now confirm our telegraph.

Yours truly,

(Sgd.)

Ross & Co.

P. JAMES GEGGIE.

No. 22.
Letter, Ross
& Co., to W.
C. Edwards
& Co., dated
29th May,
1888.

10 Please send us specification of what you deliver.

(Exhibit No. 16½.)
Messrs. Ross & Co.,
Quebec.

ROCKLAND, Ont., 4th June, 1888.

Dear Sirs,

As requested, we state below the quantity of 3 in. cull deals delivered to E. H. Lemay, on your order dated 29th May, 1888.

Yours truly,

(Sgd.)

W. C. EDWARDS & Co.

Cull deals delivered to barge "Annie" for E. H. Lemay on account of
20 Messrs. Ross & Co., Quebec, 2,362 pieces, 14-16 feet, containing 96,975 feet.

No. 23.
Letter, W. C.
Edwards &
Co., to Ross
& Co., dated
4th June,
1888.

(Exhibit No. 17.)
Messrs. W. C. Edwards & Co.,
Rockland, Ont.

QUEBEC, 11th June, 1888.

Dear Sirs,

We have your telegram; Hurteau has formally forbidden delivery of any of the deals sold by him to Little.

Please send us copy of your transfer.

We enclose copy of the transfer which puts the deals wholly in our possession. We don't know Hurteau in the matter. The deals for which we have given
30 Lemay an order were sold by order of Little before we knew of his failure. And if you decline delivering the deals for which we hold your accepted order, we must only look to you for all damages, as you have no grounds for refusing the delivery on order.

Yours truly,

(Sgd.)

Ross & Co.

Hurteau can have nothing to say to property that was transferred to us at the time we made the advance and got your accepted warehouse receipt.

(Sgd.)

Ross & Co.

No. 24.
Letter, Ross
& Co., to W.
C. Edwards
& Co., dated
11th June,
1888.

RECORD.

(Exhibit No. 18.)

QUEBEC, 15th June, 1888.

Exhibits. Messrs. W. C. Edwards & Co.,
Rockland, Ont.

No. 25.
Letter, Ross
& Co., to W.
C. Edwards
& Co., dated
15th June,
1888.

Dear Sirs,

Mr. Lemay has sent a long telegraph protest that he will hold us responsible for all the demurrage and damage caused by the detention of his barges. We have, therefore, to ask you to make us immediate delivery, or we will hold you for all damages Lemay gets against us. Please take notice of this protest.

Yours truly,

(Sgd.) Ross & Co.

10

(Exhibit No. 19.)

ROCKLAND, Ont., June 18th, 1888.

No. 26.
Letter, W. C.
Edwards &
Co., to Ross
& Co., dated
18th June,
1888.

Messrs. Ross & Co.,
Quebec, P. Q.

Dear Sirs,

We have yours of 15th instant and in reply have to say that immediately on return of the writer from Ottawa where he saw you, he returned Mr. Lemay your order, and explained to him that Mr. Hurteau had hindered us from making any delivery of the deals. We can undertake no responsibility in the matter, and are advised to hold the deals until the rival claims of yourselves and Mr. Hurteau are determined. We will gladly deliver at once this is settled, as we are anxious to have the deals out of our way.

Yours truly,

(Sgd.) W. C. EDWARDS & Co.

(There is no Exhibit 20.)

(Exhibit No. 21.)

No 27.
Statement of
account be-
tween Wm.
Little and
Ross & Co.

Estate Wm. Little, Esq. } In account with Ross & Co., in Liq.
Re Rockland Deals.

Interest at 7 per cent. to 6th June, 1888.
1888.

Mch. 8	To our accept.	Mch. 5—4 Mos.	July 8	32	15.34	\$2500.00	
" 12	"	" 8	" " " 11	35	6.71	1000.00	30
" 13	"	" 9	" " " 12	36	12.08	1750.00	
" 15	"	" 12	" " " 15	39	3.74	500.00	
" 17	"	" 14	" " " 17	41	13.75	1750.00	
2½ per cent. commission on \$7500.00.....						187.50	
						<u>51.62</u>	<u>7687.50</u>

		Cr.	RECORD.
			Exhibits.
1888.			
June 5	By cash p. E. H. Lemay, June 5.....	\$1,096 88	No. 27.
6	“ Interest.....		21 Statement of
	“ Interest received.....	51 62	account be-
	“ Balance.....	6,538 79	tween Wm
1888.			Little and
June 6,	To balance due Ross & Co. at date.....	7,687 50	Ross & Co.—
			<i>continued.</i>
10		6,538 79	
Oct. 25	Add amount paid E. H. Lemay, for lumber short delivered, etc..	564 75	
		\$7,103 54	
	Interest at 6 per cent. 4 years 323 days on \$6,538.70....	\$1,867 60	
	Interest at 6 per cent. 4 years 182 days on \$564.75....	145 92	
		—————\$2,013 52	
		\$9,117 06	

(Exhibit No. 22.)

MONTREAL, 12th January, 1888.

Agreement between Wm. Little, Esq., and E. H. Lemay,—

Wm. Little of the City of Montreal buys, and E. H. Lemay of the same place
 20 sells the following lumber, now lying at W. C. Edwards & Co.'s, yard in Rockland,
 Ontario.

No. 28.
 Agreement
 between Wm
 Little and E.
 H. Lemay,
 dated 12th
 January 1888.

1,000,000 feet 3-inch mill cull deals 12—13 and about 10 per cent. 8 to 11 feet
 at (\$7) seven dollars per M. B. M., F. O. B., Rockland, Ont.; the same being a fair
 average in width of the 3,718,718 feet lot.

493,590 feet 3 inch mill cull deals 14—16 at \$7.50 F. O. B., Rockland, Ont.

Terms, six months' note from 1st December, 1887, with three months' interest
 at 7 per cent. added to invoice; to deliver to teams any of the above lot in case
 Wm. Little so desires before opening of navigation.

(Sgd.) E. H. LEMAY.
 W. LITTLE.

30

(Exhibit No. 23.)

Dated 11th November, 1891.

W. C. Edwards & Co.,
 Rockland, Ontario.

On behalf of Frank Ross mentioned in the authority from him hereto annexed
 marked "A" in his representative character as therein mentioned, I hereby
 demand from you delivery to me forthwith of 1,000,000 feet B. M. cull deals 3 inch
 8-13, and 493,590 feet B. M. 3 inch M. cull deals 14-16, which, on 15th March,
 1888, your firm undertook and agreed to hold subject to the order of Ross & Co.,

No. 29.
 Demand on
 W. C. Ed-
 wards for
 delivery of
 lumber dated
 11th Nov.
 1891, and
 return to
 same.

RECORD. in the annexed authority mentioned and referred to in an order upon you, dated
 Exhibits. January 12th, 1888, signed by N. Hurteau et Frère, and in an order to you from
 No. 29. one Little, dated 28th February, 1888, less the 96,375 portion of the lumber above
 Demand on W. C. Ed- mentioned already delivered by you to Ross & Co. above mentioned, and I make
 wards & Co. this demand on behalf of and as agent for said Frank Ross, under the authority in
 for delivery writing hereto annexed.

(Sgd.) G. L. PARKER.

At Rockland, Ontario, in the office of W. C. Edwards & Co., on Wednesday,
 the 11th day of November, 1891, at 3 o'clock in the afternoon, speaking unto W. C. Edwards, a member of the said firm, I read to him the accompanying document marked "A" and also the above demand, and demanded delivery of the deals above mentioned, serving the said W. C. Edwards with a copy of both documents, and to which he made reply, "I will reply in writing later on, but we won't deliver the deals."

(Sgd.) G. L. PARKER.

(Exhibit No. 24.)

No. 30.
 Statement of
 claim in
 Edwards vs.
 Ross in the
 High Court
 of Justice
 Chancery
 Division,
 Ontario.

In the High Court of Justice.
 Chancery Division.
 Writ issued the twenty-first June, 1888.

Between
 William Cameron Edwards, John Archibald Cameron, John Cameron
 Edwards and James Wood, 20
 Plaintiffs,
 and
 The Honourable James Gibb Ross, and Napoléon Arthur Hurteau
 and Alceme Hurteau,
 Defendants.

Statement of Claim.

1. The Plaintiffs, under the name of W. C. Edwards & Co., are Lumber Manufacturers carrying on busines at Rockland, in the Township of Clarence. 30
2. The defendant, the Honourable James Gibb Ross carries on business as a Lumber Merchant, at the City of Quebec, in the Province of Quebec, under the name of Ross & Co.
3. The Defendants, Napoléon Arthur Hurteau and Alceme Hurteau, carry on business as Lumber Merchants, at the City of Montreal, in the Province of Quebec, under the name of N. A. Hurteau et Frère.
4. The Plaintiffs in or about the month of 1887, having about 4,212,308 feet of cull deals in their yard at Rockland, agreed to sell and did sell to the Defendants, N. A. Hurteau et Frère, the said quantity of deals, and in consid- eration of certain promissory notes for the price of said deals, made and delivered 40 by N. A. Hurteau et Frère to the Plaintiffs the said deals became the property of N. A. Hurteau et Frère.
5. The said deals or a great portion thereof remained, and now are in the possession of the plaintiffs at their yard aforesaid.

6. On 12th January, 1888, one E. H. Lemay, acting as agent for Defendant N. A. Hurteau et Frère, addressed to Plaintiffs the following letter :

MONTREAL, January 12th 1888.

Messrs. W. C. Edwards & Co.,
Rockland, Ont.

Gent.,

I have this day sold to Wm. Little, Esq., the following lumber now in your yard to my order, 1,000,000 feet, 3-inch M.C. deals 8-13 ; 493,590 feet, 3-inch M.C. deals 14-16.

10 I have given him an order on you for the delivery of same, which you will please accept, and in shipping this lumber to him you will do me a favor by seeing that he is treated as well as myself. Your reply will oblige,

Yours truly,
(Sgd.) E. H. LEMAY.

The within order is the one I mention as having been given to Little.

(Sgd.) E. H. LEMAY.

Please accept the within order and return to me at once, as I wish to get the note on delivery of same.

(Sgd.) E. H. LEMAY.

20

MONTREAL, January 18th, 1888.

Messrs. W. C. Edwards & Co.,
Rockland, Ont.

Gent.,

Please deliver to Wm. Little, Esq., or order, the following lumber now in your yard to my order, viz.:

1,000,000 feet B.M. 3-inch M. cull deals 8—13,
493,590 feet B.M. 3-inch M. cull deals 14—16,

And oblige, yours truly,

(Sgd.) E. H. LEMAY.

30

8. On the same day the Defendants, N. A. Hurteau et Frère, addressed the following letter to the Plaintiffs :

MONTREAL, 12th January, 1887.

Messrs. W. C. Edwards & Co.,
Rockland, Ont.

Gentlemen,

“ You will please rectify Mr. Lemay’s order for one million feet 3 in. mill culls 8—13 feet and 493,590 ft. 3 mill culls 14—16 sold to Mr. William Little, F. O. B. of barges with option to draw them from the piles, if he wants some during winter.

Yours truly,

40

(Sgd.) N. HURTEAU ET FRERE.

9. The plaintiffs wrote across the above order “ Accepted W. C. Edwards & Co., Jan. 20th, 1888,” but the lumber mentioned in said order was not moved or separated from the cost of the said lumber of N. A. Hurteau et Frère.

RECORD.

Exhibits.

No. 30.
Statement of
Claim in
Edwards v.
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High Court
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Division On-
tario—con-
tinued.

RECORD.

Exhibits.

No 30.
Statement of
claim in
Edwards vs.
Ross in High
Court of
Justice
Chancery
Division,
Ontario—
continued.

10. Subsequent to the foregoing order, William Little mentioned therein, addressed the following order to the plaintiffs:—

“Please hold the within mentioned quantity of deals subject to the order of Ross & Co., Quebec.

Quebec, 28th Feb., 1888.

(Sgd.) WM. LITTLE.

11. To which the Plaintiffs replied in words following:—

“Will hold within deals subject to order of Messrs. Ross & Co., as above authorized.

(Sgd.) W. C. EDWARDS & Co.

Rockland, March 15th, 1888.

10

but the said lumber was not moved or separated from the quantity of lumber herebefore sold to N. A. Hurteau et Frère.

12. The Plaintiffs delivered to the Defendants, Ross & Co., 96,975 feet, portion of the lumber directed by the above order of William Little to be delivered.

13. On or about 8th June, 1888, the Defendants, N. A. Hurteau et Frère, alleging that William Little had become insolvent and had not paid for the said lumber, ordered to be delivered to him as aforesaid, by written order, directed the Plaintiffs to stop delivery of any lumber to William Little or to the Defendants, Ross & Co., or to any one save to themselves, of the lumber purchased by them from the Plaintiffs in the fourth paragraph herein mentioned.

20

14. At the same time the Defendants Ross & Co. required the Plaintiffs to deliver to him 1,396,615 feet of lumber, being the balance of the deals set forth in the order dated 12th January, 1888, made by N. A. Hurteau et Frère upon the Plaintiffs in favor of William Little, and by William Little directed to be delivered to Ross & Co., as set forth in paragraphs 10 and 11 of this Statement of Claim.

15. The Plaintiffs have in their yard at Rockland aforesaid not separated from the lumber of N. A. Hurteau et Frère, the above named balance of 1,396,615, feet of lumber, in which they, the Plaintiffs, have no property, nor to which do they profess to have any claim.

16. The defendants N. A. Hurteau et Frère claim to be entitled to the said³⁰ balance of 1,396,615 feet of lumber, and threaten to bring an action against the Plaintiffs for the value of the same in case the Plaintiffs fail to deliver the same to them.

17. The Defendants Ross & Co. claim to be entitled to the said balance of 1,396,615 feet of lumber, and threaten to bring an action against the Plaintiffs for the value of the same in case the Plaintiffs fail to deliver the same to them, the Defendants Ross & Co.

18. The Plaintiffs are not acting in collusion with any of the Defendants respecting the said lumber or the possession thereof.

19. The said lumber is of a character that it will depreciate in value by⁴⁰ exposure, and the price that can be obtained for the same will likely diminish if not sold without delay.

The Plaintiffs claim :

1. That the lumber being the above named 1,396,615 feet be sold without delay, and the price obtained for the same be paid into Court.

2. That the Defendants N. A. Hurteau et Frère on the one side, and the Defendants Ross & Co. on the other side, be ordered to interplead regarding their respective claims to the said lumber or to the price thereof when sold.

3. That the Defendants be respectively enjoined against bringing any action against the Plaintiffs respecting the said lumber or the delivery thereof.

4. That it be declared that the Plaintiffs are entitled to be indemnified by N. A. Hurteau et Frère or by Ross & Co., respecting the said lumber or the delivery thereof.

10 5. That the Plaintiffs be paid their costs of this action out of the money for which the said lumber is sold, or by the Defendants or some one or more of them.

The Plaintiffs propose that this action be tried at the City of Ottawa, in the County of Carleton.

Delivered the twenty-first day of June, 1888, by Charles Hammett Pinhey, of the City of Ottawa, in the County of Carleton, Solicitor for Plaintiffs.

(Exhibit No. 25.)

In the High Court of Justice.
Chancery Division.

The Hon. Mr. Justice Robertson,
20

Tuesday, the 17th day July, A.D. 1888.

Between

William Cameron Edwards, John Archibald Cameron, John Cameron Edwards
and James Wood,

Plaintiffs,

and

The Hon. James Gibb Ross and Napoléon Arthur Hurteau and Alceme Hurteau,
Defendants.

30 Upon motion this day made unto this Court by Mr. Middleton of counsel for the Plaintiffs in presence of counsel for the Defendants, upon hearing read the pleadings, the affidavit of William C. Edwards filed, and upon hearing counsel aforesaid, and counsel aforesaid consenting thereto,

40 This Court doth order and adjudge that the Plaintiffs be at liberty to set apart and apportion from their stock of lumber, lumber of the kind and quality mentioned in the Plaintiffs' Statement of Claim, to the amount mentioned in the pleadings as being in question in this transaction, being 1,396,615 feet; and that the said lumber be sold forthwith with the approbation of William Marshall Matheson, Esquire, one of the Masters of the Supreme Court at Ottawa, to whom this matter is for these purposes hereby referred, and that the proceeds thereof be forthwith paid into Court to the credit of this matter, and the setting apart and apportionment of the lumber as aforesaid shall be without prejudice to the rights of any to the parties hereto.

And this Court doth further order and adjudge that the Defendants do proceed

RECORD.
Exhibits.

No. 30.
Statement of
Claim in
Edwards vs.
Ross in High
Court of
Justice,
Chancery
Division,
Ontario—
continued.

No. 31.
Judgment in
Edwards
vs. Ross,
in the High
Court of Jus-
tice, Chan-
cery Division,
Ontario,
dated 17th
July 1888.

RECORD.

Exhibits.

No. 31.
Judgment
in Edwards
vs. Ross,
in the High
Court of
Justice,
Chancery
Division
Ontario,
dated 17th
July 1888—
continued.

to trial of an issue at the next sittings of this Court at Ottawa, in which the Hon. James Gibb Ross shall be Plaintiff and Napoléon Arthur Hurteau and Alceme Hurteau shall be Defendants, and that the question to be tried in said issue shall be whether the Plaintiffs or Defendants in said issue are entitled to the lumber aforesaid, or the proceeds thereof.

And this Court doth further order and adjudge that the costs of the Plaintiffs herein, including the costs of the reference to said Master, be taxed and paid out of the proceeds of said lumber, so as to be paid into Court as aforesaid.

And this Court doth reserve further directions and the question of the rights of the Defendants as between themselves, and all other costs, until after the trial of said issue. ¹⁰

(Exhibit No. 26.)

No. 32.
Interpleader
Issue in Ross
vs. Hurteau
in the High
Court of Jus-
tice, Chan-
cery Division,
Ontario,
dated 5th
Sept., 1888.

In the High Court of Justice.

Chancery Division.

Between

The Hon. James Gibb Ross,

Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants. ²⁰

Interpleader Issue.

The Plaintiff, the Honourable James Gibb Ross, affirms, and the Defendants, Napoléon Arthur Hurteau and Alceme Hurteau, deny, that the said Honourable James Gibb Ross is as against the said Napoléon Arthur Hurteau and Alceme Hurteau entitled to the 1,396,615 feet, board measure, of 3-inch mill cull white pine deals, mentioned in the Plaintiffs' Statement of Claim in a certain action wherein William Cameron Edwards, John Archibald Cameron, John Cameron Edwards and James Wood are Plaintiffs, and the said the Honourable James Gibb Ross and Napoléon Arthur Hurteau and Alceme Hurteau are Defendants, or to the proceeds thereof. ³⁰

And it has been ordered by the Honourable Mr. Justice Robertson, that the said matter be tried at the next sittings of this Court at Ottawa.

Delivered at Ottawa this fifth day of September A.D., 1888, by O'Connor & Hogg, Solicitors for the above named Plaintiff, the Honourable James Gibb Ross, pursuant to an interpleader order of the Honourable Mr. Justice Robertson, dated the 17th day of July, A.D. 1888, in the said action wherein the said William Cameron Edwards, John Archibald Cameron, John Cameron Edwards and James Wood are Plaintiffs, and the said the Honourable James Gibb Ross and Napoléon Arthur Hurteau and Alceme Hurteau are Defendants.

(Exhibit No. 27.)

In the High Court of Justice.
Chancery Division.

Between

William Cameron Edwards, John Archibald Cameron, John Cameron
Edwards, and James Wood,

Plaintiffs,

and

The Honourable James Gibb Ross and Napoléon Arthur Hurteau
and Alceme Hurteau,

Defendants.

8th August, 1888.

Pursuant to the order of this Honourable Court, bearing date the 17th day of July, A.D. 1888, and made in this cause, I have under the rules of the Supreme Court of Judicature in the presence of all parties concerned, settled an advertisement and particulars and conditions of sale by tender for the sale of 1,396,615 feet board measure of three inch mill cull white pine deals of the dimensions mentioned in said advertisement and referred to in said orders, and such advertisement having, according to my directions, been published in the *Montreal Daily* 20 *Star* newspaper, in each daily issue thereof from the 30th day of July to the 6th day of August, 1888, both days inclusive. Upon considering the tenders sent in pursuant to the said advertisement on the 7th day of August, 1888, I found that the tender of Messrs. Ross & Co., of the City of Quebec, in the Province of Quebec, Merchants, was the highest tender for the said deals, they were declared the highest bidders for and became the purchasers of the said white pine deals at the price or sum of \$9,776.31, payable as follows:—ten per cent. of the said purchase money to be paid to the vendors' Solicitors forthwith upon the said purchasers being notified of the acceptance of their tender, and the balance thereof 30 to be paid into Court to the credit of this cause within two weeks from the said 7th day of August, the day of the notice of the acceptance of tender.

All which I humbly certify and submit to this Honourable Court.

(Sgd.) W. M. MATHESON,

Master at Ottawa.

RECORD.

Exhibits.

No. 33.
Report on
Sale of Mas-
tor in Ed-
wards vs.
Ross, dated
8th Aug.
1888.

RECORD.

(Exhibit No. 28.)

In the High Court of Justice.
Chancery Division.

Exhibits.
No. 34.
Formal
Judgment in
interpleader
issue of Ross
vs. Hurteau
in the High
Court of
Justice,
Chancery
Division,
dated 29th
April 1889.

Before the Honorable Mr. Justice Ferguson.

Monday, the 29th day of April, A.D., 1889.

Between

The Honorable James Gibb Ross,

Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants. 10

(By original action.)

And Between,

John Hoskin, Administrator of the Estate of the Honourable James
Gibb Ross, deceased,

Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants. 20

(By Order of Revivor.)

This action coming on for trial before this Court at the Chancery Sittings, at the City of Ottawa, on the 29th day of April, A.D. 1889, before the Honourable Mr. Justice Ferguson, in presence of Counsel for the Plaintiff and Defendants, upon hearing read the pleadings and proceedings, and upon hearing the evidence adduced and what was alleged by Counsel aforesaid.

This Court doth find the issue tried herein in favor of the Defendants Napoléon Arthur Hurteau and Alceme Hurteau, and this Court doth order that the said Defendants Napoléon Arthur Hurteau and Alceme Hurteau are entitled to the moneys in Court to the credit of this action, being the proceeds of the 1,396,615 feet of lumber mentioned in the said issue. 30

It is further ordered that the Plaintiff do pay to the Defendants their costs of this action to be taxed.

Judgment entered the 30th day of August, A.D. 1889.

(Sgd.)

W. M. MATHESON,

Deputy Registrar at Ottawa.

(Exhibit No. 29.)

In the High Court of Justice.
Chancery Division.

Before the Honourable

Tuesday, the thirteenth day of January, A.D. 1891.

Between

William Cameron Edwards, John Archibald Cameron, John Cameron
Edwards and James Wood,

Plaintiffs,

10

and

The Honourable James Gibb Ross, and Napoléon Arthur Hurteau
and Alceme Hurteau,

Defendants.

And Between

The Hon. James Gibb Ross,

Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants.

20

(By original action.)

And Between

John Hoskin, Administrator of the Hon. James Gibb Ross (deceased),

Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants.

(By order of Revivor.

30 Upon motion made unto this Court by Mr. Thomas P. Galt, of counsel for
Napoléon Arthur Hurteau and Alceme Hurteau, for an order for payment out of
Court to the said parties of the proceeds of the lumber which was the subject
matter of the said action, together with the costs of the said action, and the
appeals to the Court of Appeal of Ontario and the Supreme Court of Canada, in
presence of counsel for John Hoskin, administrator of the Honourable James Gibb
Ross, deceased, upon hearing read the interpleader order made in the said action
on the 17th day of July, A.D., 1888, and the interpleader issue delivered pursuant
thereto, the judgment thereon in favor of the said Napoléon Arthur Hurteau and
Alceme Hurteau, dated the 29th day of April, A.D. 1889, and the certificates of
the Court of Appeal and the Supreme Court, dismissing the respective appeals
40 from the said judgment, and the several certificates of the Taxing officer and also
of the Accountant of this Honourable Court, and also the consent of the Solicitors
for the Plaintiffs in the said action, and the consent of Napoléon Arthur Hurteau
and Alceme Hurteau.

1. This Court doth order that the sum of \$9,616.42, being the proceeds of
the lumber in question in the said action, together with the accrued interest

RECORD.

Exhibits.

No. 35.
Order in
Edwards vs.
Ross, in the
High Court
of Justice,
Chancery
Division,
dated 13th
January
1891.

RECORD.
Exhibits.

thereon in the said action, be paid out to the said Defendants, Napoléon Arthur Hurteau and Alceme Hurteau.

No. 35.
Order in
Edwards vs.
Ross, in the
High Court
of Justice,
Chancery
Division,
dated 13th
January,
1891—con-
tinued.

2. And this Court doth further order that the sum of \$596.35, being the amount of the costs taxed to the said Napoléon Arthur Hurteau and Alceme Hurteau, in respect of the proceedings in the said action in the Chancery Division and in the Court of Appeal, together with interest thereon from the 10th day of May, A.D. 1890, be paid out to Messrs. Beatty, Chadwick, Blackstock & Galt, Solicitors for the said parties.

3. And it is further ordered that the Plaintiff in the said issue do pay to the 10 said Defendants their costs of this application.

(Sgd.) GEORGE S. HOLMSTED,
Registrar.

(Exhibit No. 30.)

No. 36.
Order in Ed-
wards vs.
Ross, in the
Court of Ap-
peal for On-
tario, dated
16th January,
1891.

In the Court of Appeal for Ontario.
Before the Honourable Mr. Justice Osler.

Friday, the sixteenth day of January, 1891.

Between

William Cameron Edwards, John Archibald Cameron, John
Cameron Edwards and James Wood,

20

Plaintiffs,

and

The Honourable James Gibb Ross and Napoléon Arthur Hurteau
and Alceme Hurteau,

Defendants.

And Between

The Honourable James Gibb Ross,

Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants. 30

(By original Action.)

And Between

John Hoskin, Administrator of the Honourable James Gibb Ross, deceased,
Plaintiff,

and

Napoléon Arthur Hurteau and Alceme Hurteau,

Defendants.

(By order of Revivor.

Upon the application of the above named Napoléon Arthur Hurteau and Alceme Hurteau and upon reading the certificate of the Supreme Court of Canada, dismissing the appeal from this Court in the said action, the allocatur of the Registrar of the said Court, the certificate of the Accountant and the order of the Chancery Division of the High Court of Justice, dated the 13th day of January, 1891, and the consent of the said Napoléon Arthur Hurteau and Alceme Hurteau,

1. It is ordered that the sum of \$321,80 being the amount of the costs taxed

to the said Defendants (Respondents) upon appeal to the Supreme Court of Canada, be paid out of Court to Messrs. Beatty, Chadwick, Blackstock, & Galt, Solicitors for the said parties.

2. And it is further ordered that the balance of the said monies paid into Court as security for costs of the said appeal to the Supreme Court be paid out to John Hoskin, Administrator of the Honourable James Gibb Ross, deceased.

(Sgd.) A. GRANT,
Registrar.

RECORD.
Exhibits.
No. 36.
Order in
Edwards vs.
Ross, in the
Court of Ap-
peal for On-
tario, dated
16th January,
1891—
continued.

(Exhibit No. 31.)

TORONTO, 13th June, 1888.

10 W. C. Edwards & Co.,
Rockland, Ontario.

We forbid you to deliver to William C. Little or James Ross & Co., or any person claiming under them, any lumber referred to in order dated January 12th, 1888, signed by E. H. Lemay, we being the owners thereof, and the said Little having become insolvent without having paid for the same; and we also forbid you delivering any lumber belonging to N. A. Hurteau et Frère, that is now in your yard, to the said Little or Ross or from separating or interfering with any lumber at any time owned by us and claimed by Little or Ross.

BEATTY, CHADWICK, BLACKSTOCK & GALT,
Solicitors for N. A. Hurteau et Frère.

20

No. 37.
Letter from
Hurteau Bros
Solicitors
for W. C.
Edwards, &
Co, dated
13th June
1888.

(Exhibit No. 32.)

MONTREAL, January 12th, 1888.

William Little, Esq.,
City.

Bought of E. H. Lemay,

To 1,000,000 feet 3 inch 12-13 M. C. deals at \$7.00.....	\$7,000 00
493,590 " " 14-16 M. C. deals at 7.50.....	3,701 92
7 per cent. Int. on \$10,701. 92 for 3 months.....	193 49

\$10,895 41

The above lumber now in yard at your risk.

The above settled by note at 6 months from 1st December, 1887.

Montreal, January 23rd, 1888.

E. H. LEMAY.

30

No. 38.
Receipted
Invoice
given by
E. H. Lemay,
to Wm Little,
dated 12th
January,
1888.

(Exhibit No. 33.)

Extract from Depositions of James Geggie taken in Ross vs. Hurteau.

Q. At the time this agreement, on the 28th February, was entered into were you or Mr. Ross aware that Mr. Little had not paid for this lumber? A. We were aware that he had given a note for it—his own note.

No. 39.
Extract
from depos-
itions of
James
Geggie,
taken in
Ross vs.
Hurteau.

RECORD.

Q. Were you aware of the amount of the note? A. We were.

Exhibits.

Q. Something over \$10,000, was it not? A. Something over \$10,000.

No. 39.

Q. And you, of course, knew then that it had not been paid—you knew when the note would mature? A. We knew when the note would mature.

Extract from depositions of James Geggie, taken in Ross vs. Hurteau—*continued.*

(Exhibit No. 34.)

Extracts from Depositions of N. A. Hurteau taken in Ross vs. Hurteau.

No. 40.
Extracts from depositions of N. A. Hurteau taken in Ross vs. Hurteau.

Q. You are one of the firm of N. A. Hurteau et Frère? A. Yes.

Q. You reside and transact business at Montreal? A. Yes.

Q. What is your business? A. Lumber dealers.

10

Q. You remember the failure of Wm. Little? A. Yes.

Q. Were you interested in any way in that failure? A. Yes, I sold some lumber to Little, and was interested to a certain amount, as mentioned in the claim.

Q. The amount mentioned here? A. Yes, \$10,800.

Q. Was that the price of the lumber that you had sold him? A. Yes.

Q. The lumber mentioned in these documents in this suit? A. Yes, \$10,800 and something.

Q. How much lumber did you have at Rockland, do you remember?
A. I had 4,212,308 feet.

Q. And of that you sold to Wm. Little 1,493,950 feet? A. Yes, that is about the quantity.

Q. That was of mill cull deals? A. Mill cull deals.

Q. Of different qualities as mentioned in the memorandum? A. Only 20 one quality. The four millions mentioned there are all of one quality.

Q. But different sizes? A. Two lengths.

Q. One million feet of one length and a balance of another length, but all of the same quality? A. Yes.

Q. Are those sold by board measure or standard hundreds? A. Board measure.

Q. They were lying in Rockland, were they not, at Edwards' yard?
A. Yes.

Q. Had you any other deals there? A. This is the only kind of deal I had there, this 4,200,000 feet.

30

Q. Did they form only one lot? A. I do not know whether they were in one lot or separate. The only thing I know was there were so many deals in his yard, and we settled for them. I do not know where they were at all.

Q. Did you see them? A. No, I never saw them in block. I saw the quality when we were purchasing them.

Q. You did not see how they were situated in Mr. Edwards' yard or whether they were separated from the large quantities of deals there? A. No.

Q. Do you know whether they formed a complete and separate body of piles by themselves, or were they part of a larger quantity? A. There was a certain quantity in the pile, but no piles were marked, according to the information I got from Mr. Edwards.

Q. No piles were marked in your name? A. No, none were marked in my name.

Q. Do you know whether Mr. Edwards had in his yard any other deals besides this 4,200,000 feet of yours? A. I cannot say.

Q. You do not know whether these were separated from any other deals he had there? A. Do not know.

Q. Who was acting for you in the sale of those deals to Mr. Little?
A. Mr. Lemay.

Q. Did he receive the note of Mr. Little for this sale? A. Yes.

10 Q. That is the \$10,800 you spoke of? A. Yes.

Q. Did he transfer that note to you? A. Yes, at the same time.

Q. You recognized Mr. Lemay as your agent throughout this transaction?

A. Yes.

Q. And you wrote that letter, a copy of which is here, on the 12th January, 1888, to Mr. Edwards to ratify the sale to Mr. Lemay of these 1,493,590 feet?

A. Yes.

Q. "Sold to William Little, f.o.b. on barges, with option to draw from the piles if he wants them during the winter"—was it you that wrote that letter?

A. Yes, I wrote it myself.

20 Q. At the time that the order by Lemay, of January 18th, 1888, was sent to Mr. Edwards for the delivery of those deals to Mr. Little—that is, on the 18th January, you observe—did you know that he was selling them? A. I knew the same day I wrote the order to Mr. Edwards. Of course, when Lemay made the sale he came to me and I said "very well," and I ratified it the same day.

Q. How did it come about that you wrote this letter of the 12th January? Did Lemay come to you and tell you he had sold, or was about to sell, these deals to Little? A. Yes, he showed the agreement marked exhibit "D."

Q. And you then ratified the agreement by writing that letter? A. Yes.

Q. Mr. Edwards was the person who had charge of these for you?

30 A. They were in his yard.

Q. And you recognized him as the person to whom you would direct orders for the delivery of them? A. Yes.

Q. Was there any agreement by which he was to accept orders and deliver for you? A. No, there was no other order than the one I sent.

Q. Was there any arrangement between you and Mr. Edwards by which he was to accept orders and deliver lumber? A. No.

Q. There was no verbal or other arrangement with him? A. No.

Q. Did you expect when you sent him an order that he would deliver?

40 A. According to my instructions.

Q. Was your intention that he would simply allow people to take away the lumber you had sold? A. I had no other intention than what I wrote to Mr. Edwards.

Q. Your intention was that Mr. Wm. Little was to draw it away when he liked? A. A certain part of it.

.....
Q. When did you become aware of the sale by Mr. Little of this lumber to Ross & Co.? A. Two days, or the day, before the maturity of the note.

Q. Of which note? A. Of Mr. Little's note to me. He went to Lemay

RECORD

Exhibits.

No. 40.
Extracts from
depositions of
N. A. Hur-
teau, taken in
Ross vs.
Hurteau—
continued.

first and asked him to renew the note. I refused, and then he presented the state of his affairs to me.

Q. Who presented the state of his affairs? A. Mr. Little. Mr. Lemay sent Mr. Little to me. He said, "I have nothing to do with it; you must go to Mr. Hurteau."

Q. You refused to renew the note? A. Yes, and then he told me about his affairs. Then I said, "If you cannot pay, give me my deals." He said, "I cannot, they are transferred."

Q. That was a day or two before his note became due? A. Yes. I think it was on a Saturday, and it came due on Monday, if I am not mistaken. 10

Q. Then you never knew of any transfer or sale of these deals to any person? A. No, never heard of it before.

.....

(Exhibit No. 35.)

MONTREAL, 12th January, 1888.

No. 41.
Letter, Hur-
teau et Frère,
to W. C. Ed-
wards & Co,
dated 12th
Jan., 1888.

Messrs. W. C. Edwards & Co.,
Rockland, Ont.

Gentlemen,

You will please rectify Mr. Lemay's order for one million feet 3 in. mill culls 8—13 feet and 493,590 feet 3 in. mill culls 14—16 feet sold to Mr. William Little, f. o. b., of barges with option to draw them from the piles, if he wants some dur-²⁰ing winter.

Yours truly,

(Sgd.) N. HURTEAU ET FRERE.

Judgment of Meredith, J., delivered after the argument.

No. 42.
Judgment of
Meredith, J.,
dated 25th
April 1893.

25 April, 1893.

His Lordship—I shall not delay the parties in carrying out their intention, expressed by counsel, to carry this case much further, for I entertain opinions strong enough, in regard to some of the matters in question, for the final determination of the action.

I hold that the question of the actual ownership of the goods is determined by the interpleader proceedings. The Plaintiff submitted to these proceedings. He³⁰ cannot be heard to say that it was not a question to be so determined. If his present contention be right it seems to me that he ought not to have submitted to that issue, that Edwards was not entitled to it.

And assuming that liability might arise here, by way of estoppel or otherwise, notwithstanding the actual ownership of the property by Hurteau, and that the interpleader proceedings do not stand in the Plaintiff's way, I find that the advances were not made on the faith of these "acceptances," very clearly not on the latter one; but were made upon the faith and security of Little's actual rights to the lumber, of which Ross had full knowledge. He took no higher rights than Little actually had.

It is not a case of warehousing under the act at all.
 This is enough for the determination of the matters in issue between the parties ;
 and the action must accordingly be dismissed, with costs.
 Proceedings may be stayed in the usual manner.

RECORD.
 No. 42.
 Judgment of
 Meredith, J.,
 dated 25th
 April, 1893—
continued.

Formal Judgment.

Tuesday the 25th day of April, A.D. 1893.

This action coming on this day for trial before this court at the Chancery Sittings holden at the City of Ottawa before the Honorable Mr. Justice Meredith upon hearing read the pleadings and proceedings and upon hearing the evidence adduced and
 10 what was alleged by counsel for the Plaintiff and Defendants.

This court doth order and adjudge that this action be and the same is hereby dismissed with costs to be paid by the Plaintiffs to the Defendants forthwith after taxation thereof.

No. 43.
 Formal
 Judgment,
 dated 25th
 April, 1893.

In the Court of Appeal for Ontario.

Reasons of Appeal.

The Plaintiff submits that the judgment dismissing this action is erroneous and ought to be reserved on the following grounds :—

1. The Defendants by the acceptance of the order of Messrs. Hurteau Bros. in favour of Little attorned to and became a bailee of the said Little in respect of the
 20 quantity and description of the lumber specified in said order.
2. Messrs. Ross & Co. advanced to the said Little the amount appearing in the evidence on the faith of the representations contained in the said acceptance that the Defendants held the said lumber for Little.
3. The Defendants in signing the acceptance must be taken to have known that the said Little would use the same as evidence in the disposal of the said lumber and that the Defendants held it for him.
4. The Defendants are estopped from showing as against the Plaintiff representing Ross & Co. that they did not in fact hold the lumber which they acknowledged by the said receipt to be in possession of, they Ross & Co. having made
 30 advances to the said Little and relying upon the representation made in the said receipt by the Defendants.
5. Even assuming (which is not admitted) that by the proceedings in the Interpleader action it has been determined that the lumber in fact was the property of Hurteau Bros. and not of Little that affords no answer by the defendants to the claim of Ross & Co. under the circumstances of this case.
6. In any event as to the last instalment of the advance made by the said Ross & Co. to the said Little it was expressly made upon the attornment by the Defendants to them as regards the said lumber and the Defendants held the said lumber from thenceforth as bailees of the said Ross & Co.
7. The Defendants having become bailees of the said lumber for Ross & Co. were not at liberty to dispute or deny their title thereto.

No. 44.
 Plaintiffs
 Reasons of
 Appeal to
 Court of Ap-
 peal for On-
 tario.

RECORD.

No. 44.
Plaintiffs
Reasons of
Appeal to
Court of Ap-
peal for On-
tario—
continued.

8. There is no bar in the Interpleader proceedings and the trial of a feigned issue cannot without an order of the court prevent the Plaintiff from asserting his undoubted claim to the property in the said lumber.

The Appellant will refer to the following authorities in support of the appeal :

Simm v. Anglo-Am. Tel. Coy, L. R. 5 Q. B. D. 201.

London Joint Stock Coy v. Simmons, Appeal cases, (1892) 201.

Tomkinson v. Balkis, Con. Coy. 2 Q. B. D. (1891) 614 ; and cases there discussed.

Waterhouse v. Bank of Ireland 29 L. R. Ir. (1892) 384.

Seton v. Lafone 19 Q. B. D. 68.

Coventry v. Great Eastern Ry. Coy. 11 Q. B. D. 776.

Knights v. Wiffen, L. R. 5 Q. B. 663.

Steward v. Dunkin, 2 Camp. 344.

Gosling v. Birnie, 7 Bing. 343.

Hawes v. Watson, 2 B. & C. 540.

Woodley v. Coventry, 2 H. & C. 164.

Cababe on Interpleader, 2nd Ed, pp. 12, 26 and others.

Re Allsopps & Joys Contract, 61 L. T. N. S. 213.

Jones v. Williams, 4 H. & N. 706.

Merch v. Stanbury, 2 H. & N. 155.

Cranshay v. Thornton, 2 Mylne & Craig, 1.

Attenborough v. St. Catharines Docks Coy., L. R. 3 C. P. D. 454.

The reasons for judgment of the Judges of the Supreme Court in *Ross v. Hurteau*, not reported, but printed in former case in appeal herein at pp. 8 to 23.

D'ALTON MCCARTHY,

Counsel for Appellant.

Reasons against Appeal.

No. 45.
Reasons
against
Appeal.

1. The proceedings in the Interpleader suit brought by the Respondents and to which the Appellants testator and Hurteau Brothers were parties constitute a complete discharge to the respondents in respect of the matters now in question. 30

2. By the consent given in those proceedings by the appellants testator to a particular and specific dealing by the Respondents with the lumber in question, the Appellant is precluded from objecting, as he does in this action, to the Respondents dealing with the said lumber in accordance with the terms of the said consent.

3. It is plain upon the evidence that the Appellants testator before he made any advances to Little was made fully aware of the state of Little's title to the lumber in question and that he did not rely in making those advances upon any so-called representation by the respondents in and by their acceptances of the respective orders in the evidence mentioned or otherwise.

4. Under the circumstances disclosed by the evidence there can be no estoppel 40 upon the Respondents.

5. It is made clear by the evidence taken at the trial that the advances made by the Appellant's testator were made before the acceptance by the Respondents of the order given by Little in favour of the Appellants testator.

6. It is also made clear that the Respondents in and by their acceptances of the orders mentioned in the evidence merely agreed to treat the respective persons in whose favour the said orders were drawn as assignees of such title as the respective drawers of the orders had, and did not make any representation whatever as to such title; and indeed had no knowledge of the terms upon which the parties to the said orders respectively had dealt with each other.

RECORD.
No 45.
Reasons
against
Appeal—
continued.

7. There was no contract between the Respondents and the Appellant's testator beyond possibly a contract to deliver to him if and when Little should become entitled to delivery.

10 8. The acceptance by the Respondents of the order of Hurteau Brothers in favour of Little would not have operated to make the Respondents liable to Little if by reason of the latter's default in payment of the purchase money to Hurteau Brothers they had stopped delivery of the lumber to Little. It cannot be therefore treated as an attornment by the Respondents to Little. The Appellant is in no better position than Little as he only acquired Little's title, there being nothing in the evidence to warrant any application of the doctrine of estoppel.

9. The facts which were shown at the trial of this action were not before the learned Judges of the Supreme Court whose dicta are relied upon in the Reasons of Appeal and those dicta are based professedly upon an entirely different state of facts.

20 10. The Respondents rely upon the judgment appealed from and upon the judgments in the Queen's Bench and in this Court upon the motion to stay proceedings.

GEO. F. SHEPLEY,
Counsel for Respondents.

In the Court of Appeal for Ontario

Reasons for
Judgment.

Between
Frank Ross (Plaintiff) - - - Appellant.
and
W. C. Edwards & Co. (Defendants) - - - Respondent.

30 Judgment delivered 13th day of November, 1894.

Argued before the Court consisting of Hagarty, C. J. O., and Burton, Osler, and Maclennan, J. J. A. on the 2nd and 3rd days of April, 1894.

Opinions of the Judges.

Judgment of
Hagarty,
C. J. O.

Hagarty, C. J. O.,—The earlier facts are very fully known to us.

In the agreement between Little and Ross it is stated that Little had applied for an advance by Ross and as collateral security pledges to Ross "Edwards' warehouse receipt for 1,493,590 feet all pine deals," producing to him the order from Lemay of January 18th on Edwards to deliver to Wm. Little or order same quantity.

40 On this Edwards had written his acceptance. Little produced this document to Ross and wrote on it the order to Edwards "Please hold within quantity of deals subject to order of Ross & Co."

RECORD.

No. 46.
Reasons for
Judgment—
continued.
Judgment of
Hagarty,
C. J. O.—
continued.

Edwards on this writes :

“ Will hold within deals subject to order of Ross & Co. as above authorised.”

Little had previously told Ross that he had bought the timber and given his note then current for the price.

Before separation of the Little quantity from the larger pile and on the dishonour of the note Hurteau, Little's vendor, steps in claiming as an unpaid vendor and ordered Edwards not to deliver.

We have decided in this Court on the interpleader that Hurteau had such right as his vendor's lien. Our decision has been affirmed by the Supreme Court not exactly on same reasoning. 10

The course of litigation as to this timber has been most singular and unfortunate.

Edwards finds the timber claimed by Hurteau and by Ross.

He stands, at least as he supposes, indifferent between them ; declares that he claims no interest and asks that the claimants be called on to interplead and be barred of all claim against him.

They assent to the issue of the interpleader order, and neither party in so assenting suggests any claim whatever against Edwards, and they proceed to trial, the only question raised being whether Hurteau or Ross owned the lumber.

It was finally determined in Supreme Court in favour of Hurteau.

The interpleader order does not bar action by either as against Edwards. 20

I have no doubt whatever in my mind that had such bar been asked it would have been granted.

As I understand, the present practice is that a party called in to interplead states any claim he may have against the applicant and the order may be made reserving such right or directing its trial.

In fact under the elastic form of actions now in vogue I presume the rights of either as well inter se as against the applicant might be determined in one proceeding. I cannot hold that Ross is barred of recourse against Edwards by not urging his claim when the interpleader was asked and I regret I cannot so hold as I think his not doing so was unfair and was an afterthought consequent on his failure as against Hurteau. 30

Lord Bramwell says (*Sim v. Anglo American Co.* 5 Q.B.D. 202): “ An estoppel may be said to exist where a person is compelled to admit that to be true which is not true and to act upon a theory which is contrary to the truth. I do not undertake to give an exhaustive definition but that formula nearly approaches a correct definition of estoppel.”

Lord Esher says : “ An estoppel gives no title to that which is the subject matter of estoppel. The estoppel assumes that the reality is contrary to that which the person is estopped from denying and the estoppel has no effect upon the reality of the circumstances. . . . If the goods in respect of which he has estopped himself really belong to somebody else it seems impossible to suppose that by any process of law he can be compelled to deliver over another's goods to the person in whose favour the estoppel exists against him.” Such person may maintain trover.

See also Cotton, L. J., at p. 213.

It seems very clear that Edward's acceptance of the order in favour of Ross had not the legal effect of a warehouse receipt nor, if it had been an ordinary delivery order, it would not have the force of a bill of lading to pass the property : *McEwan v. Smith*, 2 H. L. 323.

I do not see how the case can be decided against Edwards on the mere ground of estoppel. RECORD.

It does not contain any representation of any fact.

The distinction is well pointed out in *Farmiloe v. Bain*, 1 C. P. Div. 445, cited by Mr. Justice Patterson. No. 46.
Reasons for
Judgment—
continued.

There the defendants sold to Burrs & Co. 100 tons of zinc on credit. Soon afterwards the plaintiffs bought 50 tons from Burrs & Co. who sent them invoices with common delivery orders on defendants. Judgment of
Hagarty,
C. J. O—
continued.

10 Plaintiffs required a specific undertaking from defendants to deliver them and defendants' agent then gave to Burrs & Co. an undertaking to deliver to their order the quantity named. Burrs & Co. endorsed this to plaintiffs.

Burrs & Co. became insolvent and defendants refused to deliver.

The Court held in favor of defendants and that they were not estopped; that "it was a mere undertaking or contract between the parties and their immediate vendees" and that plaintiffs had no right to rely upon it as a representation and did not bring themselves within either of the propositions as to estoppel laid down in *Carr v. L. & N. W. Ry.*, L.R. 10 C.P. 307.

20 There the defendants as owners sell to B. & Co. on their bill for the price. They sell to plaintiff with a delivery order. Plaintiff requires specific undertaking from Defendants to deliver to B. & Co.'s order. The Defendants give express undertaking to deliver 25 tons out of the quantity sold. B. & Co. hand this to plaintiff who thereupon gives his acceptance. Then B. & Co. fail.

Here the goods sold to Little had never been severed from the bulk. Had they been so at time of sale or severed by Edwards under the order the property would have completely vested in Little and all lien been at an end.

Ross knows all about Little's title, is shown it, knows the lumber is unpaid for and a bill is current for price.

The delivery order from Hurteau is not acted upon by severance from bulk.

Edwards writes "accepted" on this order.

30 Then when Little gives order on Edwards to Ross it is worded "Please hold within mentioned quantity of deals subject to order of Ross & Co." and Edwards writes thereon "Will hold within deals subject to order of Ross & Co. as above authorized."

Little gave no higher title to Ross than he possessed, viz: a right subject to the unpaid vendors' lien until quantity severed and their becoming absolutely Little's property and at his risk.

Does Edwards do anything more than agree to hold the unascertained quantity for Ross so far and so far only as Little could authorize to hold it?

40 Why should Edwards be held to anything more than agreeing if Ross had legally acquired absolute right to the unsevered quantity he as bailee would hold it for him?

Hurteau comes in then, as it were, by title paramount, claims and recovers all.

Little's title was subject to this claim before severance. Ross cannot get more than Little could give and all Edwards does is, in effect, that so far as Little authorizes he will hold the unsevered quantity for Ross.

It seems to me to be a harsh straining of legal obligation to hold that Edwards in effect by what he did guaranteed Ross against Little's defective or defeasible title.

RECORD.

No. 46.
Reasons for
Judgment—
continued.

It would seem from *Farmiloe v. Bain* that if Hurteau, the owner, had given to Little an agreement to deliver to him or his order the unsevered quantity purchased by him and he had endorsed such order to Ross for value they could still resist delivery and claim as unpaid vendors.

Judgment of
Hagarty
C. J. O.—
continued.

It would be no estoppel on them.

The learned Judge who tried this case held first that Ross was bound by the interpleader proceedings.

Secondly "That the advance was not made on the faith of these acceptances. Very clearly not on the later one, but were made upon the faith and security of Little's actual rights to the timber of which Ross had full knowledge. He took no higher 10 rights than Little actually had."

This latter is one of the grounds taken against this appeal, that the evidence shows Ross had made the advances before he got Edwards alleged "allowment" to him.

It did appear that they made their advance to Little on his production of his title from Hurteau, he undertaking to get Edwards acceptance in Ross' favour.

In that sense it may be said that Ross made the advances on the documents Little produced and on his promise to get the acceptance from Edwards direct to Ross.

The judgment of Mr. Justice Patterson also seems to lean to that view.

It seems impossible to hold Edwards liable by estoppel.

20

He asserted nothing as a fact. He represented nothing. He merely accepts for Ross whatever title Little conveyed to him. He professed to hold under that authority.

I cannot hold him as guaranteeing any higher or more indefeasible title.

Whatever difference of opinion on the general law may have existed in the Supreme Court the final decision there, as here, was that Hurteau was entitled to the timber as against Ross.

The minority of the Court were against the right of Hurteau.

In this judgment we must consider that question finally settled.

No. 46.
Reasons for
Judgment—
continued.

Judgment of
Burton, J. A.

Burton, J. A.—I think it may be fairly inferred from the fact that in the suit 30 for an interpleader an injunction was prayed for to prevent any suit against the present defendants by Ross or Hurteau, and that no such injunction was granted in the consent decree, that that course was taken designedly and that the plaintiffs intended to preserve their rights against the present defendant in the event of their failure against Hurteau. Such a course was open to them and without any special reservation of rights. I think that that is the proper conclusion upon the documents.

The learned Judge who tried that issue came to the conclusion that the property had never passed from Hurteau and that the issue must be decided therefore in his favour, a judgment which was confirmed in this Court upon that ground, but in the Supreme Court although the Judgment was confirmed it was not upon the same 40 grounds, the Chief Justice and Fournier, J., agreeing in the reasons on which this Court decided, but Mr. Justice Gwynne and Mr. Justice Strong dissented on the ground that Hurteau was estopped from denying that the property had passed to Little and from Little to Ross whilst Mr. Justice Patterson likened the case to one

of stoppage in transitu and held that Hurteau had done nothing to estop himself from asserting his vendor's lien for unpaid purchase money. RECORD.

Ross & Co. having failed in that suit are now asserting their right to recover against Edwards & Co. on the ground that they are estopped from denying their title. No. 46.
Reasons for
Judgment—
continued.

Notwithstanding the way in which estoppels are sometimes referred to I must confess that I share the opinion of the late Baron Bramwell "that he did not know how the business of life could go on unless the law recognized their existence." Judgment of
Burton, J. A.
—continued.

Mr Justice Gwynne in the judgment referred to has expressed a very decided opinion that the order in favour of Little when accepted by the defendants constituted them bailees of Little, and that purchasers for value from Little stood in the same position.

But whatever might have been the Plaintiff's rights if dependent upon the order in favor of Little, it is clear that they declined to make the advance upon Little's order alone, but agreed to do so only on the Defendants giving a distinct memorandum acknowledging the transfer, which they did in these words:

"Will hold within deals subject to order of Ross & Co., as above authorized, 15th March, 1888."

The case has been argued as one of estoppel, but is it not rather one of contract?

To constitute an estoppel of this kind all the following elements must be present. There must have been a false representation or a concealment of material facts. The representation must have been made with knowledge of the facts.

The party to whom it was made must have been ignorant of the truth of the matter.

It must have been made with the intention that the other party should act upon it. The other party must have been induced to act upon it. 19 Q.B.D. 68.

What then was the false representation relied on?

The Plaintiffs in their statement of claim state it thus:

II. The Defendants by their acceptance and undertaking, in the seventh paragraph hereof mentioned, represented to the said Ross & Co., that the said deals in the said order referred to were the property of the said Little, and that the same were lying in their said yard at Rockland, and undertook and agreed that the same would be delivered to said Ross & Co. when demanded by them, and the said Ross & Co., believing the said representations to be true, made the said advances in money to said Little on the strength thereof.

It is not to be overlooked that the letter enclosing the order to the Defendants makes no allusion to their intention to make advances upon the lumber but merely informs them that Little has transferred it to them and asks their acceptance of the transfer.

It appears to me that if this amounted to a representation at all, it was in accordance with the fact that Hurteau had given an order in favour of Little for this quantity of deals, and they had recognized it with the further agreement on their part to hold the same for the Plaintiffs, but it involved no representation that the lumber was free from the vendor's lien—a fact of which the Defendants' were ignorant.

It amounted in other words to this: We recognize Little's transfer to you and will deliver to you in place of Little.

RECORD.

No. 46.
Reasons for
Judgment—
continued.

Judgment of
Burton, J. A.
—continued.

I am of opinion that the case does not fall within the propositions I have referred to, but there is this further answer to it that the Plaintiffs were aware of all the facts and that the deals had not been paid for.

But there is this further reason why the Plaintiffs should not recover. The learned Judge has found upon evidence which appears clearly to warrant it that the advances were not made on the strength of the Defendants' memorandum of the 15th of March.

Then as to the alleged conversion, it appears to me there are several answers. The actual title to the goods themselves it is conceded was disposed of in the interpleader issue. It may for this purpose be taken that he cannot deny that a contract has been entered into which he is unable to perform, but it was a contract without consideration, but how can he be liable for the conversion of goods which do not belong to him and at the time of the alleged conversion were not in his possession? But there is this further answer: the goods were disposed of under an order of the Court in a suit to which both these litigants were parties in August, 1888, and the conversion complained of is the non-compliance with a demand made on the 11th November, 1891, more than three years after he had ceased to have control of them.

The conversion, if any, was the act of the Court with the consent of the parties. I am therefore of opinion that the judgment is right and ought to be confirmed.

No. 46.
Reasons for
Judgment—
continued.

Judgment of
Osler, J. A.

Osler, J. A.—The Plaintiff's case is put in two ways. 1st, As an action for the conversion of a specific quantity of lumber belonging to him, and 2nd, as an action to recover damages by reason of certain representations made by the Defendants as to Little's title to the lumber having turned out to be untrue, the Plaintiff having made advances to Little in reliance upon the truth of such representations.

The whole case lies, it appears to me, in very narrow compass and the facts relevant are neither numerous nor complicated.

The question of title to any specific lumber is certainly disposed of as between the parties to this suit by the interpleader directed on the application of the Defendants between the now Plaintiff and Hurteau.

It was there held to be the property of Hurteau, and not the property of the Plaintiff. That was the question for the purpose of trying which the interpleader was directed and the judgment in favour of Hurteau is an end of the matter, so far as regards title between all the parties to the interpleader action.

This however was the only question dealt with in the former proceeding, which left open to future litigation any other claim which the Plaintiff might have against the Defendants on the footing of estoppel or representation. The terms of the interpleader order are precise and clear: "The question to be tried in the said issue shall be whether the Plaintiffs (Ross), or the Defendants (Hurteau) in the said issue, are entitled to the lumber aforesaid or the proceeds thereof." Whether any defence to the Defendants interpleader action by a way of denial of their right to relief therein might have been raised by the now Plaintiffs, arising out of the representations said to have been made by the now Defendants, need not be considered. The motion for the interpleader order was made by Edwards & Co. before the Defendants had pleaded and it was necessarily founded upon, and confined to, relief sought in the action in respect of the specific opposing claims set forth in the statement of claim,

nor do I see how any other claim such as that now raised could have been made the subject of an issue in the depending action. On this point my opinion is in favour of the Plaintiff's contention. He is not precluded from making a case against the defendants on the other ground if he can. It was incumbent upon him to allege and prove the representations said to have been made by the Defendant; that the advances made by him to Little, were made on the faith of and in reliance upon such representations; that they were such as he had a right to reply upon; and that they were false, whereby he suffered damage.

RECORD.

No. 46.
Reasons for
Judgment—
continued.Judgment of
Osler, J. A.
—continued.

10 The allegation is that the defendants by their acceptance and undertaking set forth in the seventh paragraph of the Statement of Claim, viz., the order of Lemay of the 12-18 January, 1888, the acceptance of the 20th January of the Defendants thereon endorsed, the order of Little of the 28th February, 1888, and the Defendant's acceptance of the letter of the 15th March, 1888, represented to Ross & Co., whom I speak of for convenience sake as the Plaintiff, that the deals (lumber) referred to were the property of Little; that the same were lying in their yard at Rockland, and that they undertook and agreed that the same would be delivered to Plaintiff when demanded, and that the Plaintiff, relying on and believing that these representations were true, made the advances in money to said Little on the strength thereof.

20 Then they allege that the representations in question (except as to a small quantity of the lumber) were false, whereby Plaintiff has suffered damage.

Now whether upon the true construction of these orders and acceptances (to describe them by those terms) it ought to be held that the Defendants did not thereby make such representations respecting Little's right and title to the deals as would have been sufficient to estop them from denying that he had such right and title, if it had been shown that the Plaintiff had in fact relied upon them in making their advances, is a question which, in the now state of the case, is not really necessary to be decided. Possibly taking all the documents together, including especially for this purpose the bought and sold note of the 12th January, 1888, and its confirmation by Hurteau of the same date, the case may be brought within the authority of *Farmiloe v. Bain*, I.C.P.D. 445. But the great difficulty in the Plaintiff's way is that the evidence fully supports the finding of the learned trial judge that the advances were not in fact made upon the faith of the Defendants' acceptances. Not only are the Plaintiffs aware of the actual character of Little's title to the lumber, that it had not been delivered to him, that the Defendants' possession was still that of Hurteau, and that Hurteau was in the position of an unpaid vendor, but it is further proved that the advances, except the last, were made before the Plaintiff had received the Defendants' acceptance of Little's order, and that the last would have been made whether the Plaintiffs had received it or not. This evidence strikes at one of the vital parts of the Plaintiff's case and appears to me to be conclusive against his right to recover, for
40 it shows not only that he ought not to have been put to rest and was not put to rest by the representations he now says he relied upon, but also that they were not the cause of his damage.

The appeal must therefore be dismissed.

RECORD.

Maclennan, J. A.—I am of opinion that the judgment should be affirmed.

No. 46.
Reasons for
Judgment—
continued.
—
Judgment of
Maclennan,
J. A.

The Plaintiff's counsel presented his case to us as one of trover, although in the Statement of Claim conversion is only alleged as an alternative case and the main complaint is of representations made by the Defendants, and which were untrue, and were relied on by the late Mr. Ross to his damage. This latter part of the Plaintiff's cause of action is summed up in the 11th and 12th paragraphs of the Statement of Claim, which allege in substance that the Defendants represented to Ross that the deals were the property of Little and were lying in the Defendants' mill yard, and that the Defendants undertook and agreed that they would be delivered to Ross when demanded by him; that Ross, relying on and believing the said representa- 10 tions to be true, made advances to Little on the strength thereof; that both representations were false and untrue, and that the deals were not then the property of Little or in the Defendants' yard.

It was not contended that the alleged representations were made fraudulently, and therefore the Plaintiff cannot support the action as one of deceit. *Derry v. Peek*, 14 A. Cas. 337

It was however contended that there was a conversion by the Defendants, that the deals were in law and in fact the property of Mr. Ross, and if not and if they were the property of Hurteau & Frère, yet the Defendants were estopped by their representations from denying the plaintiff's property, and were therefore as much 20 liable in trover as if they were the property of Ross.

The deals were in the possession of the Defendants, and there was a demand and refusal, and if at that time the property was in Ross either in law and fact or by estoppel as between him and them the Defendants must be liable.

The Defendants contended that the interpleader proceedings were a bar to the action in all respects, but I do not think so. The case made by the Defendants in their interpleader action was purely one of conflicting claims in respect of the property in the goods and had no reference to possible claims for damages, and, while the judgment on the issue is conclusive as to property between Hurteau and Ross, I do not see how any liability which the Defendants may have incurred to Ross irre- 30 spective of the true ownership of the goods, can be supposed to have been barred or affected by the interpleader proceedings. I think, however, that these proceedings have settled one question which is of importance in this action, namely, whether the deals were in law and in fact the property of the present Plaintiffs or not. It was the very object of the proceedings to settle that question, and it would be strange indeed if that could be litigated again by any of the parties as against either of the others. The judgment in the interpleader action which directed the issue between Hurteau and Ross is expressed to have been made by consent of counsel for all parties, and it directed the trial of an issue between the Defendants, whether Ross or Hurteau was entitled to the property or the proceeds thereof. It was pronounced by the Court on 40 the application and for the benefit of the present Defendants, and being in an action between them as Plaintiffs and Ross and Hurteau as Defendants, the result of the trial is obviously *res judicata* as between them all. As between those three parties, therefore, the Court has decided that the legal property in the deals in question was in Hurteau and not in the Plaintiffs, and that at the time of the demand and refusal the former and not the latter was the person entitled to demand and receive them from the Defendants. I think, therefore, that the Plaintiff's case as for an actual con-

version of the Plaintiff's goods is concluded by the interpleader proceedings and must therefore fail. RECORD.

There remains then the question of estoppel, and I think that part of the case also fails. The first averment is that the defendants represented that the deals were the property of Little and that is rested first upon the acceptance of the Lemay order of the 18th of January, and secondly upon the acceptance of Little's order of the 15th March. With regard to the first acceptance I fail to see how that can be regarded as a statement of property in Little. The sale to Little was for future delivery. The delivery was to be the act of the vendors. It was to be free on board barges which could not be done before the opening of navigation, or if required sooner, they might be delivered to teams. The order which the defendants accepted, is to be found partly in Hurteau's letter and partly in Lemay's order of the 12th and 18th January respectively. The two papers together are no more than a notification by the owners of the property to their bailees that they have sold a part of it and a request that the bailees would deliver it to the purchaser in a particular manner. The acceptance is no more than an admission by the defendants of notice of the sale, and an undertaking by them with Hurteau and Co., to perform for the latter the service of delivering the goods free on board the barges when so required by the purchaser on the opening of navigation, or to make delivery to sleighs if so required during the winter. How it can be regarded as anything else or as a statement that the property in the deals is in Little I am quite at a loss to understand.

But then it is said that at all events the subsequent acceptance of the 15th of March is such a statement. This is what was done. On his dealings with Ross, Little wrote upon the acceptance of the 18th January and signed the words "Please hold the within mentioned quantity of deals subject to the order of Ross & Co., Quebec." and the defendants thereupon wrote thereon and signed the following: "Will hold the within deals subject to order of Messrs Ross & Co as above authorized." Now as was pointed out by Mr. Justice Patterson in his judgment in the Supreme Court this undertaking cannot be distinguished from that in *Farmiloe v. Bain*, I. C. P. D. 445 which was "we hereby undertake to deliver to your order endorsed hereon" and which Lord Esher said obviously contained no representation of any fact but if anything was a mere undertaking or contract between the plaintiffs and their immediate vendees. It follows therefore that the second acceptance any more than the first cannot be regarded as a representation on which the plaintiff was entitled to rely or as a ground on which to found an estoppel against the defendants.

But even if it could be held that these instruments signed by the defendants did contain the representations alleged, I think it is shown that when he agreed to make advances to Little, and when these advances were actually made, Ross was fully acquainted with all the facts. He knew the precise terms of Little's contract with Hurteau, both as to the delivery of the deals, and the payment by note, and no particular can be pointed out wherein he was deceived or misled by the defendants or anyone else.

It is also proved that Mr. Ross did not act on the faith of the last acceptance. The agreement for advances was made on the 28th of February. On the 10th of March Ross sent to the defendants their original order which he had received from Little saying, "Mr Little has transferred the deals to us as you will see by his endorsement. Please accept this transfer and return us the order." This letter was

No. 46.
Reasons for
Judgment—
continued.
—
Judgment of
MacLennan,
J. A.—con-
tinued.

RECORD.
No. 46.
Reasons for
Judgment—
continued.
Judgment of
MacLennan,
J. A.—con-
tinued.

received by the defendants. They signed the acceptance as requested on the 15th and it was received by Mr. Ross on the 17th March, but Mr. Ross did not wait until its return to make his advances to Little. He advanced all but \$1,750 of the total sum of \$7,500 before its return by accepting Little's drafts and he accepted the \$1,750 on the 17th, the same day of its return. It is clear therefore that Ross made the greatest part of his advances without any reliance on the defendants' second acceptance, and as to the other part, the \$1,750, Mr. Geggie his man of business so far from saying that the last advance was made on the faith of that acceptance says he supposes that if they had not got that back before the draft was presented they would have accepted the draft all the same.

10

I think therefore that the proper conclusions are that there was no representation made of any existing fact to constitute an estoppel; that if there was Mr. Ross had full knowledge and was not misled or deceived; and finally that the advances which occasioned his loss were not made to any extent upon the faith of the alleged misrepresentation: Carr v. L. & N. W. Ry. Co., L. R. 10 C. P. 307.

The result therefore in my judgment is that the Plaintiff's case fails altogether and that the appeal should be dismissed.

In the Court of Appeal for Ontario.

No. 47.
Certificate of
Judgment of
Court of Ap-
peal for On-
tario, dated
13th Nov.,
1894.

Tuesday the 13th day of November, 1894. 20

Between

Frank Ross, - - - - - (Plaintiff) Appellant,
and
W. C. Edwards & Co., - - - - - (Defendants) Respondents.

This is to certify that the appeal of the above named Appellant from the judgment of the Honourable Mr. Justice Meredith, one of the Justices of the Chancery Division of the High Court of Justice of Ontario, pronounced on the twenty-fifth day of April, 1893, having come on to be argued before this Court on the second and third days of April, last, whereupon and upon hearing counsel as well³⁰ for the Appellant as the Respondents, this Court was pleased to direct that the matter of the said appeal should stand over for judgment; and the same having come on this day for judgment; it was ordered and adjudged that the said appeal should be and the same was dismissed with costs to be paid by the Appellant to the Respondents forthwith after taxation thereof.

(Signed) A. GRANT, Registrar.

[Seal]

No. 48.
Bond of Ap-
pellant and
two sureties
to prosecute
Appeal to
Her Majesty
in Council,
dated 19th
Dec., 1894.

Know all men by these presents that we, Frank Ross of the City of Quebec,⁴⁰ in the Province of Quebec, and Dominion of Canada, Merchant; Richard Nagle of the City of Ottawa, in the Province of Ontario, and Dominion of Canada, Lumberman; and William Mackey of the said City of Ottawa, Lumberman, are jointly and severally held and firmly bound unto W. C. Edwards & Co., of the Village of Rockland, in the County of Russell, in the said Province of Ontario, Lumber Manu-

facturers, in the penal sum of two thousand dollars, for which payment well and truly to be made we bind ourselves and each of us by himself our and each of our heirs executors and administrators respectively firmly by these presents.

Dated this nineteenth day of December, in the year of our Lord, 1894.

Whereas the said Frank Ross alleges that in the giving of judgment in a certain action in Her Majesty's Court of Appeal for Ontario, between the said Frank Ross, (Plaintiff) Appellant, and the said W. C. Edwards & Co., (Defendants) Respondents, manifest error hath intervened, wherefore the said Frank Ross desires to appeal from the said judgment to Her Majesty in Her Majesty's Privy Council.

10 Now the condition of this obligation is such that if the said Frank Ross do and shall effectually prosecute such appeal and pay such costs and damages as shall be awarded in case the judgment aforesaid to be appealed from shall be affirmed or in part affirmed then this obligation shall be void otherwise shall remain in full force.

Signed, sealed and delivered in the presence of JAMES GEGGIE, Accountant, as to signature of FRANK ROSS. As to signatures of RICHARD NAGLE, and WILLIAM MACKEY, W. HUTTON.

FRANK ROSS. (Seal)
W. MACKEY. (Seal)
R. NAGLE. (Seal)

RECORD.
No. 48.
Bond of Appellant and two sureties to prosecute Appeal, to Her Majesty in Council, dated 19th Dec., 1894.
—continued.

20 City of Quebec, Province of Quebec, to wit.

I, James Geggie, of the City of Quebec, in the Province of Quebec, accountant, make oath and say :

1. That I was personally present and did see the within instrument duly signed, sealed and executed by Frank Ross, one of the parties thereto.
2. That the said instrument was so executed at the City of Quebec aforesaid.
3. That I know the said Frank Ross.
4. That I am a subscribing witness to the said instrument.

“ JAMES GEGGIE. ”

30 Sworn before me at the City of Quebec in the Province of Quebec, this nineteenth day of December, A.D. 1894.

(Seal)

“ W. NOBLE CAMPBELL, ”

Notary Public in and for the Province of Quebec.

No. 49.
Affidavit verifying execution of Bond by Appellant, sworn 19th Dec., 1894.

Province of Ontario, City of Ottawa, to wit.

I, William Hutton, of the City of Ottawa, in the Province of Ontario, clerk, make oath and say :

- 40 sealed and executed by Richard Nagle and William Mackey, two of the parties
2. That the said instrument was so executed at the City of Ottawa aforesaid.
 3. That I know the said parties.
 4. That I am a subscribing witness to the said instrument.

“ WILLIAM HUTTON. ”

Sworn before me at the City of Ottawa, in the Province of Ontario, this thirty-first day of December, A.D. 1894.

“ J. P. FISHER, ”

A Commissioner, etc.

No. 50.
Affidavit verifying execution of Bond by Richard Nagle and Wm. Mackey, sworn 31st Dec., 1894.

RÉCORD.

No. 51.
Affidavit of
Justification
by sureties,
sworn 21st
and 22nd
Dec., 1894.

In the Court of Appeal for Ontario.

Between
Frank Ross (Plaintiff) - - - - - Appellant,
and
W. C. Edwards & Co., (Defendants) - - - - - Respondents.

I, Richard Nagle, of the City of Ottawa, in the Province of Ontario, lumberman, make oath and say :—That I am a resident inhabitant of Ontario and am a freeholder in the said City of Ottawa, and that I am worth the sum of two thousand dollars over and above what will pay all my debts. And I, William Mackey, of the said City of Ottawa, lumberman, make oath and say :—That I am a resident inhabitant of Ontario, and am a freeholder in the said City of Ottawa, and that I am worth the sum of two thousand dollars over and above what will pay all my debts.

“ W. MACKEY.”

“ R. NAGLE.”

The above named deponent Richard Nagle was sworn before me at the City of Ottawa in the Province of Ontario, this thirty-first day of December, A.D. 1894, and the above named deponent William Mackey was sworn before me at the City of Ottawa, in the Province of Ontario, the twenty-second day of December, A.D. 1894.

“ J. P. FISHER,”

A Commissioner, &c.

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In the Court of Appeal for Ontario.

No. 52.
Order allow-
ing security,
dated 1st
Feb., 1895.

The Honorable Mr. Justice MacLennan.

Friday the 1st day of February A.D. 1895.

Between
Frank Ross, (Plaintiff) - - - - - Appellant,
and
W. C. Edwards & Co., (Defendants) - - - - - Respondents.

Upon motion made this day on behalf of the above named Appellant, Frank Ross, upon reading the bond in the penal sum of two thousand dollars, bearing date the 19th day of December 1894, and duly executed by Frank Ross of the City of Quebec in the Province of Quebec, merchant, Richard Nagle of the City of Ottawa in the Province of Ontario, lumberman and William Mackey of the said City of Ottawa, lumberman, filed, and upon hearing counsel for all parties.

It is ordered that the said bond be allowed as a good and sufficient bond for security for the Respondents for their costs of the appeal herein by the said Appellant to Her Majesty in Her Privy Council, and the said appeal be and the same is hereby allowed.

Costs of this order to be costs in the cause.

(Sgd) A. GRANT, Registrar.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE
COURT OF APPEAL FOR ONTARIO.

BETWEEN
FRANK ROSS - (*Plaintiff*) *Appellant*,
AND
W. C. EDWARDS & CO. (*Defendants*) *Respondents*.

RECORD OF PROCEEDINGS.

BOMPAS, BISCHOFF & CO.,
4 Great Winchester Street, E. C.
for Appellant.

NORTON, ROSE, NORTON & CO.,
57½ Old Broad Street, E. C.
for Respondents.