Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ross v. *W. C. Edwards and Company, from the Court of Appeal for Ontario ; delivered 27th July* 1895.

Present:

LORD WATSON.
LORD HOBHOUSE.
LORD MACNAGHTEN.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The Respondents W. C. Edwards & Co. who are manufacturers of lumber carrying on business at Rockland in the Province of Ontario, sold to the firm of Hurteau et Frère about 4 million feet of deals stored in their yard at Rockland.

On the 12th of January 1888 Hurteau et frère sold to William Little about a million and a half of those deals f. o. b. at Rockland. The sale was at 6 months' credit from the 1st of December 1887 with a provision for delivery to teams in case Little so desired before the opening of navigation.

On the 20th of January W. C. Edwards & Co. accepted a delivery order in favour of W. Little or order dated the 18th of January.

On the 28th of February Little arranged with the firm of Ross & Co. for an advance to him to the amount of $7,500 pledging the delivery order of the 18th of January as a collateral security for the advance.

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On the same day Little endorsed upon the delivery order these words :—

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

" WILLIAM LITTLE."

Little then drew upon Ross & Co. five drafts amounting to $7,500 which were duly accepted.

On the 10th of March Ross & Co. wrote to W. C. Edwards & Co. the following letter enclosing the delivery order of the 18th of January :—

" Quebec 10th March 1888.

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

Gentlemen,

" We enclose an order accepted by you holding
" 1,000,000 feet B.M. 3-in. M. cull deals - 8—13
" 493,590 - - - - - 14—16
" subject to the order of William Little. Mr. Little has
" transferred the deals to us as you will see by his endorse-
" ment. Please accept this transfer and return us the
" order.

" Yours truly,
" Ross & Co."

On the 15th of March 1888 W. C. Edwards & Co. endorsed on the delivery order of the 18th of January the following undertaking :—

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

" W. C. EDWARDS & Co.
" Rockland March 15th, 1888."

The order was then returned to Ross & Co. in the following letter :—

" Rockland Ont. March 15th 1888.

" Messrs. Ross & Co. Quebec.
" Dear Sirs,

" We have accepted transfer of cull deals from Mr. Little
" to ourselves 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.

" Yours truly,
" W. C. EDWARDS & Co.

" Insured for $11,000. We have policy."

In June 1888 after a small portion of the deals had been delivered to Ross & Co., Little

suspended payment without having paid Hurteau et frère. Hurteau et frère immediately gave notice to W. C. Edwards & Co. requiring them not to make any further delivery to the order of Little. Ross & Co. on the other hand insisted on delivery of the rest of the deals. Thereupon W. C. Edwards & Co. brought an interpleader action making both Hurteau et frère and Ross & Co. Defendants. An order was made for the sale out of the stock in W. C. Edwards & Co.'s yard of a sufficient quantity of deals to make up the balance undelivered under the order of the 18th of January and an issue was directed to determine the title to the lumber or the proceeds of the sale. At the trial judgment was given in favour of Hurteau et frère, and the judgment was affirmed on appeal both by the Court of Appeal for Ontario and the Supreme Court of Canada.

The lumber in question having been declared to belong to Hurteau et frère as unpaid vendors and not to Ross & Co., Frank Ross the present Appellant as representing Ross & Co., brought this action against W. C. Edwards & Co. The material allegation in the statement of claim was that the $7,500 advanced to Little were advanced in reliance on the undertaking of W. C. Edwards & Co. of the 16th of March 1888, that by such undertaking W. C. Edwards & Co. represented to Ross & Co. that the deals in question were the property of Little and undertook and agreed that the same would be delivered to Ross & Co. when demanded, that Ross & Co. relying on such representations and believing the same to be true made the said advances to Little on the strength thereof, and that the representations were false the deals in question not being the property of Little as represented by W. C. Edwards & Co. As an alternative case the

Appellant alleged a conversion by W. C. Edwards & Co. of the deals in question.

The learned Judge before whom the action was tried dismissed it with costs, and the Court of Appeal for Ontario unanimously affirmed the decision.

In the opinion of their Lordships there is no foundation for the present appeal. The case is perfectly clear.

In bailments such as that upon which the Appellant founds his claim the bailor represents to the bailee that he may safely accept the bailment. On this representation the bailee promises to redeliver. It is clear that the bailee after acknowledging that he holds the goods in his hands on account of the bailor cannot say to the bailor "the goods are not yours," but it is equally clear that if there is that which amounts to eviction by title paramount the bailee is discharged from his promise. In that event he is under no liability to the bailor unless he has made a special contract with him or is in some way to blame for his loss. (*Biddle* v. *Bond* 6 B. and S. 225.) In the present case Edwards & Co. did not dispute the title of the bailor while they were bailees. But there was eviction by title paramount. The goods were adjudged to belong not to Ross & Co. but to Hurteau et frére. The learned Counsel for the Appellant indeed contended that W. C. Edwards & Co. were in fault and that there was something special in the terms of their acceptance. They argued that the acceptance was equivalent to an undertaking by W. C. Edwards & Co. to deliver the lumber to Ross & Co. in any event whoever might be the true owner at the time. In their Lordships' opinion that is an extravagant proposition. W. C. Edwards & Co. acted with strict propriety throughout the transaction. The delivery

order was in common form. So was the acceptance. There was nothing special or unusual about the one or the other.

It is not suggested that there was any agreement or any undertaking on the part of W. C. Edwards & Co. except what is to be found in the documents in evidence. On the documents the Appellant's case fails. If the oral evidence is looked at it is plain that the Appellant's claim is not only unfounded but absurd. It was proved or admitted that Ross & Co. knew that Little had not paid for the goods while W. C. Edwards & Co. knew nothing about the matter. It was found by the Court of First Instance and by the Court of Appeal that Ross & Co. did not accept Little's drafts on the faith of W. C. Edwards & Co. accepting the delivery order in their favour.

Their Lordships will therefore humbly advise Her Majesty that the appeal ought to be dismissed. The Appellant will pay the costs of the Appeal.