

---

THE PICTOU BANK AND DOUGALD } APPELLANTS; 1887  
 LOGAN (DEFENDANTS)..... }  
 AND \* Feb. 16, 17.

CHARLES H. HARVEY (PLAINTIFF)..... RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Sale of goods—Delivery—Non-acceptance by vendee—Return of goods  
 to vendor—Rescission of contract—Re-sale.*

---

\* PRESENT—Sir W. J. Ritchie C.J., and Strong, Fournier, Henry and  
 Gwynne JJ.

1887  
 PICTOU  
 BANK  
 v.  
 HARVEY.

H. doing business at Halifax, N.S., was accustomed to sell hides to J. L. of Pictou. Their usual course of business was for H. to ship a lot of goods consigned to J. L., and send a note for the price according to his own estimate of weight, &c., which was subject to a future rebate if there was found to be any deficiency.

On July 14, 1884, a shipment was made by H. in the usual course and a note was given by J. L., which H. caused to be discounted. The goods came to Pictou Landing and remained there until August 5th, when J. L. sent his lighterman for some other goods and he finding the goods shipped by H. brought them up in his lighter. The next day J. L. was informed of their arrival and he caused them to be stored in the warehouse of D. L. where he had other goods, with instructions to keep them for the parties who had sent them. The same day he sent a telegram to H. as follows: "In trouble. Have stored hides. Appoint some one to take care of them." H. immediately came to Pictou and having learned what was done, expressed himself satisfied. He asked if he would take the goods away, but was assured by J. L. that they were all right and left them in the warehouse.

On August 6th a levy was made, under an execution of the Pictou Bank against J. L., on all his property that the sheriff could find but the goods in question were not included in the levy. On August 12th J. L. gave to the bank a bill of sale of all his hides in the warehouse of D. L., and the bank indemnified D. L. and took possession under such bill of sale of the hides so shipped by H. and stored in said warehouse. In a suit by H. against the bank and D. L. for the wrongful detention of said goods:

*Held*,—Affirming the judgment of the court below, that the contract of sale between J. L. and H. was rescinded by the action of J. L. in refusing to take possession of the goods when they arrived at his place of business and handing them over to D. L. with direction to hold them for the consignor, and in notifying the consignor who acquiesced and adopted the act of J. L., whereby the property in and possession of the goods became re-vested in H.; and there was, consequently, no title to the goods in J. L. on August 12th when the bill of sale was made to the bank.

**APPEAL** from a decision of the Supreme Court of Nova Scotia, sustaining a verdict for the plaintiff.

This was an action commenced in the Supreme Court of Nova Scotia, at Pictou, for the conversion of 162 hides and for damages for the detention of the same. The defendants appeared and denied the con-

version and detention. They also denied the title of the plaintiff to the property and alleged title in the Pictou Bank, one of the defendants.

The plaintiff prior to the transaction out of which this action arose did business in Halifax, and was in the habit of shipping hides to one John Logan, a tanner, near the town of Pictou. The course of business seems to have been for the plaintiff to ship whatever hides he had for sale to Logan, and as soon as the shipment was made to forward an invoice and note for the amount named in it; on receipt of the invoice and note, Logan signed the latter and returned it to the plaintiff by mail. It also appears that by arrangement between Logan and the plaintiff, the hides should be accepted, and whatever was wanting in weight and quality should be the subject of a rebate to be made to Logan by Harvey.

On the 14th July, 1884, the plaintiff forwarded from Halifax, addressed to "John Logan, Pictou," 162 hides, the bill of lading, given by the agent of the Inter-colonial railway, providing that they were to be carried to Pictou station. The hides were put off at the land terminus of the railway at Pictou Landing, on the south side of the harbour from Pictou station, and remained there until the 5th of August, 1884. On that day Logan's lighterman, John Cameron, was sent by Logan with the lighter to Pictou landing for a carload of vitriol. He was not told to bring anything else but finding the hides there he took them in his lighter. Logan did not see them until the next day, the 6th, when the tannery stopped work: and in the morning he sent for the lighterman and told him he "was in trouble and that he had better put the hides in separate lots just as he got them from the railway and put them in Dougald Logan's store" which was done. The same day, August 6th, he sent the following

1887

PICTOU  
BANK  
v.

HARVEY.

1887  
Pictou  
Bank  
v.  
Harvey.

---

telegram to Harvey: "In trouble, have stored hides, "appoint some one to take charge of them." Harvey came to Pictou, the hides were stored for him, and he expressed himself as satisfied. He asked if he had not better take them away but was told that they were all right, and he returned to Halifax, and left them there.

The hides were landed from the lighter and stored between seven and nine o'clock, a.m., on Aug. 6th. On the same day the deputy sheriff with an execution on a judgment by confession in the suit of *Pictou Bank v. John Logan*, levied on all the property of John Logan, but did not levy on the hides. He applied to Dougald Logan for permission to enter the warehouse and get the hides but was refused. On the 7th an agreement was entered into between the bank and Logan by which he was to give a deed of assignment of all his property which he had under his possession or control and embracing all his personal property now held bound by the said execution, and agreed to deliver into possession of the Pictou bank or its agents all the personal estate, property and effects to be transferred by such deed. Logan became the bank's agent or servant under the terms of the agreement and superintended the business thenceforth for the bank. On the 12th of August Logan executed and gave to the Pictou bank an assignment of his property to pay the bank the amount due. It contained a schedule and there is a general clause ending as follows:—"Also all the hides and sole leather owned by the said John Logan, or stored by him in any buildings, warehouse or store-room of Dougald Logan, or in his keeping."

"All the personal property assigned by the foregoing deed poll or bill of sale and schedule, has been this day delivered into the actual possession of William B. O. Meynell, as agent for the Pictou bank, and it is now in his possession in the tannery and on lands and premises

owned by the bank."

The particular hides in question had not been that day delivered into the actual possession of Meynell or the bank and were not delivered at all until over a month afterwards viz., the 25th of September when Dougald Logan gave them up to the Pictou bank upon receiving a bond of indemnity. They were manufactured by the Pictou bank.

Harvey brought an action and recovered a verdict, which was sustained by the Supreme Court of Nova Scotia.

The defendants then appealed to the Supreme Court of Canada.

*Sedgewick Q.C.* for the appellants.

The property had vested in Logan and there must be a formal re-sale to Harvey to give him a title. Being Logan's property they passed to the bank under the bill of sale. The following authorities were cited: *Bushel v. Wheeler* (1); *Bentall v. Burn* (2); Benjamin on Sales (3).

*Borden* for the respondent cited *Sturtevant v. Orser* (4); *Grout v. Hill* (5); Benjamin on Sales (6).

Sir W. J. RITCHIE C.J.—I think there was a clear re-sale in this case; in fact, I think as strong a case of re-sale as could be made. These goods were shipped from Halifax and came to Pictou Landing, but were not taken from thence, or received by the consignee or taken away by his orders. The consignee sent over to obtain delivery of other property, and the goods in question were brought with the property so sent for. They arrived at their place of destination in Pictou on the evening of the 5th of August. The consignee was not aware that they had arrived until the next morn-

1887

PICTOU  
BANK  
v.  
HARVEY.

(1) 15 Q. B. 443.

(2) 3 B. & C. 423.

(3) P. 134.

(4) 24 N. Y. 538.

(5) 4 Gray (Mass.) 361.

(6) P. 392.

1887

PICTOU  
BANK  
v.

HARVEY.

Ritchie C.J.

ing. When informed he immediately, then and there repudiated the receipt of the goods and gave directions that they should, with other goods belonging to other parties under similar circumstances, be deposited in the warehouse of his brother, with whom he does not appear to have had any business connection, with instruction to be kept there for the benefit of the parties who had shipped them from Halifax. His brother put a lock on the door of the warehouse and the consignee Logan says those goods were never in his possession, and that on the 12th of August, when the bill of sale was executed, they were not, and never had been, in his possession. He immediately communicated with Harvey in Halifax informing him that he had stored the goods and asking him to appoint some person to take charge of them, whereupon Harvey came to Pictou and was informed by Logan that the hides had come up in the lighter on the day previous, and that he (Logan) had stored them in Dougald's store for him (Harvey). Logan says:—

The hides reached my place on the 5th August, 1884, between five and six in the evening. I did not see them that evening nor next day. On the morning of the 6th, early, I sent for John Cameron, who brought them there. I told him I was in trouble, and that he had better get the boys and put the hides in separate lots just as he got them from the railway, and put them in Dougald Logan's store. I said they belonged to different parties and I wanted them returned to them. I never saw these hides sent by Harvey, or took any possession of them. I told my brother Dougald to keep them for the parties who had sent them. I told him who the parties were. He agreed to take possession of them for the parties and did so, and he locked the building. He got a lock and put it on the door. Never had after that the hides in my possession, or under my control. I wired the different parties next morning.

Harvey asked if he should take the goods away and Logan assured him that they were all right. He clearly assented to what Logan had done, and it is equally clear that the goods were held by Dougald Logan for Harvey whereby the contract was, to all intents and

purposes, rescinded.

Under these circumstances, inasmuch as the defendants in this case claim under a bill of sale executed on the 12th of August, I think that at that time there was no property in these goods in John Logan which he could transfer under the bill of sale.

1887  
 PLOTOU  
 BANK  
 v.  
 HARVEY.  
 Ritchie C.J.

The plaintiff has made out his title to the goods and I think the appeal should be dismissed.

STRONG, FOURNIER and HENRY JJ. concurred.

GWYNNE J.—It appears to be undisputed that the moment the consignee had notice of the arrival of the goods, which it is to be observed he had not ordered, he intending that the goods should get back to the plaintiff repudiated their receipt and placed them in a warehouse for the plaintiff and as his property and notified him thereof by telegram, and the warehouseman received them as the property of and for the plaintiff, and the same day the plaintiff and the consignee came together when the plaintiff assented to and adopted the act of the consignee. Under these circumstances I am of opinion that the possession of the warehouseman was the possession of the plaintiff who became repossessed of the goods as his own property prior to the 12th of August, and as the defendants only claim goods which were the property of Logan the consignee of the goods in question, at the time of the execution by him to the bank of the deed of the 12th of August under which alone the defendants claim, the plaintiff is entitled to prevail.

*Appeal dismissed with costs.*

Solicitors for appellants: *Sedgewick, Ross & Sedgewick.*

Solicitors for respondent: *Graham, Tupper, Borden & Parker.*