1883

*May 1.

*June 19.

MERCHANTS BANK OF HALIFAX. (PLAINTIFFS)..... } APPELLANTS;

AND

PETER S. McNUTT (DEFANDANT).....RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF PRINCE EDWARD ISLAND.

Promissory Note—Notice of dishonor by post sufficient—37 Vic., ch. 47, sec. 1 (D).

The Merchants Bank of Halifax (appellants) as holders of promissory notes endorsed by McN. (respondent) brought an action against him for their amount. The notes were dated at Summerside, and were payable at the agency of the Merchants Bank of Halifax, Summerside. The defendant resided at the town of Summerside, and his place of business was there. Notices of dishonor were given to defendant by posting such notices, addressed to the defendant at Summerside, at 1 o'clock p.m. on the day after the day on which the notes matured, the postage on such notices being duly prepaid in both cases. There is no local delivery by letter carriers from the post office in Summerside. No evidence was given by defendant that he did not receive the notices of dishonor, nor was any evidence given by the plaintiffs that the defendant had received them. The jury found for the defendant, contrary to the charge of the learned judge. A rule *nisi* having been granted to set aside this verdict, and for a new trial, the court discharged this rule *nisi* and directed the verdict to stand, on the ground that the posting of the notices of dishonor to the defendant was not sufficient notice of dishonor, inasmuch as both plaintiff and defendant resided in the same town, and the notices of dishonor should have been delivered to the defendant personally, or left at his residence or place of business.

Held, (reversing the judgment of the court below), that since the passing of 37 Vic. ch. 47, sec. 1, the notices given in the manner above set forth were sufficient.

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

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APPEAL from a judgment of the Supreme Court of Prince Edward Island.

The following was the special case stated for the opinion of the Supreme Court of Canada.

"This cause came on for trial before Hensley, J., and a common jury, at Summerside in Prince County, at the term of the court held there in June, 1882.

"At the trial it appeared that the defendant duly endorsed to the plaintiffs the promissory notes mentioned in the first and second counts of the declaration, and that these notes were discounted at the agency of the plaintiffs' bank at Summerside.

"The maker of these promissory notes made default in payment of them as they respectively became due, and notices of dishonor were given to the defendant by posting such notices, addressed to him at Summerside aforesaid, at one o'clock p m on the day after the day on which the notes matured, the postage on such notices being duly prepaid in both cases.

"The defendant resided at the town of Summerside, and his place of business was there. There is no postal delivery by letter carriers.

"No evidence was given by the defendant that he did not receive the notices of dishonor, nor was any evidence given by the plaintiffs that the defendant had received them.

"The judge, at the trial, directed the jury to find a verdict for the defendant on the first count of the declaration, he being of opinion that a chattel mortgage (referred to in his judgment) was a discharge to the defendant of his liability upon the note mentioned in that count, inasmuch as time was given to the maker; but as regards the note mentioned in the second count, their verdict should be for the plaintiff for the amount of that note and interest.

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"The jury found a verdict for the defendant on all the issues.

"In Trinity Term, 1882, a rule *nisi* was granted to set aside this verdict and for a new trial.

"This rule *nisi* was argued in Michaelmas Term, 1882, and judgment delivered in Hilary Term, 1883, discharging this rule and directing the verdict to stand on the ground that the posting of the notices of dishonor to the defendant was not sufficient notice of dishonor to the defendant, inasmuch as both plaintiffs and defendant resided in the same town, the court holding that the notices of dishonor should have been delivered to the defendant personally, or left at his residence or place of business.

"The judgment of the court was delivered by Hensley, J., a copy of which forms part of this case.

"It is agreed that the only question intended to be raised on the present appeal, is—

"Were the notices of dishonor sufficiently given by addressing the same to the defendant at Summerside in the manner before set forth?

"If the court should be of opinion that these notices were sufficiently given, it is agreed that the appeal should be allowed, the verdict of the jury in the court below set aside, and a new trial ordered.

E. J. Hodgson, Q.C., for appellants, contended:

(1) The notices of dishonor were sufficiently given pursuant to the provisions of the 37th Vic., ch. 47.

(2) Even independent of this statute, the posting of a notice through the post office is sufficient. Chalmers on Bills of Exchange (1); *Stocken* v. *Collin* (2); *Woodcock* v. *Houldsworth* (3); *Mackay* v. *Judkins* (4); *Cosgrave* v. *Boyle* (5).

(1) Pp. 160-161.
(2) 7 M. & W. 515.
(3) 16 M. & W. at p. 126.
(4) 1 F. & F. 208.
(5) 6 Can. S. C. R. 165.

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L. H. Davies, Q.C., for respondent :

Where the holder and endorser of a promissory note reside in the same town and there is no postal delivery in such town by letter carrier, the simple posting of a notice of dishonor in the post office addressed to the endorser is not sufficient notice unless proof is given that he received it on the day after the dishonor of the note, and the law is not altered by 37 Vic., ch. 47, sec. 1.

He cited, *inter alia*, Story, Prom. Notes (1); Story, Bills of Exchange (2); Daniel Neg. Instruments (3); Chitty on Bills (4); *Crosse* v. *Smith* (5); *Stocken* v. *Collin* (6).

RITCHIE, C.J. :—

This was an action against defendant as indorser of two promissory notes. Maker made default. The notes were dated Summerside, and were payable at the agency of the Merchants Bank, of Halifax, Summerside. The defendant resided at the town of Summerside, and his place of business was there. Notices of dishonor were given to defendant by posting such notices addressed to the defendant at Summerside, at 1 o'clock p.m. on the day after the day on which the notes matured, the postage on such notices being duly prepaid in both cases. There is no local delivery by letter carriers from the post office in Summerside. No evidence was given by defendant that he did not receive the notices of dishonour, nor was any evidence given by the plaintiffs that the defendant had received them. The jury found for the defendant, contrary to the charge of the learned judge. A rule *nisi* having been granted to set aside this verdict, and for a new trial, the court discharged this rule *nisi* and directed

(1) 7 Ed., sec. 312.
(2) Sec. 382.
(3) 2 vol. pp 60 & 61 (3rd ed).
(4) 11th Ed., ch. 19, p. 321.
(5) 1 M. & S. 544.
(6) 7 M. & W. 515.

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the verdict to stand, on the ground that the posting of the notices of dishonour to the defendant was not sufficient notice of dishonour, inasmuch, as both plaintiff and defendant resided in the same town, the notices of dishonour should have been delivered to the defendant personally, or left at his residence or place of business.

The only question raised on this appeal is, were the notices of dishonour sufficiently given by addressing and posting the same to the defendant, or in the manner before set forth.

Defendant's contention is, that as the plaintiffs carried on business, and the note became due and payable, in Summerside, and the defendant also resided in Summerside, the notice should have been served personally, or at the place of the indorser's abode or business.

Plaintiffs contend that, whatever the law formerly might have been, it is now, since the passing of the Dominion statute 37 Vic , ch. 47, sec. 1, quite sufficient, even where the parties do reside in the same place, to give notice as done in the present case, through the post office.

The words of the section in question, are as follows :

> Notice of the protest or dishonour of any bill of exchange, or promissory note, payable in Canada, shall be sufficiently given if addressed in due time to any party to such bill or note entitled to such notice, at the place at which such bill or note is dated, unless any such party has, under his signature on such bill or note, designated another place, when such notice shall be sufficiently given if addressed in due time to him at such other place ; and such notices so addressed shall be sufficient, although the place of residence of such party be other than either of such before-mentioned places.

The word " addressed " in this statute refers to the place at which a letter directed to the indorser will find him ; the place to which it is addressed need, by

no means, be either the place of his residence or of his business; it is fixed without reference to either by arbitrarily dating the note at any given place. The simple addressing the note to the indorser, if nothing more was done, would amount to no notice; it must be put in the way of reaching the indorser. What is the usual way of transmitting a letter so as to reach a stranger, but through the post office? The holder having received a note dated at a particular place, what is there in the statute to require him to seek out the actual place of residence, or place of business, of the indorser, with which the statute intended he should have nothing to do, and of which he may be entirely ignorant? It was not, in my opinion, the intention of the statute that he was to deal with the notice, addressed in accordance with the provisions of the statute, in one way if he discovers the indorser lives in the same town or city, as he, the holder, and in another manner if he lives a mile or so outside of the town or city at which the note is dated. Suppose the holder and indorser, as in this case, were at Summerside, but the note should have been dated Charlottetown, surely a notice addressed to the indorser at that place and mailed, would be sufficient, or if the parties resided in Charlottetown and the note was dated Snmmerside, a notice addressed and mailed to the indorser there, would be likewise clearly sufficient; then what possible objection can there be to an indorsee addressing the notice and mailing it at Summerside, having pre-paid all postage that could be exacted? I can find nothing in the statute to indicate that any duty of making inquiry as to the residence of an indorser, before determining how the notice should be given, is imposed on the holder; on the contrary, I think the object of the statute was to relieve holders from the necessity of making any such inquiry, and to prevent any such issue being raised as that on

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which this case was decided in the court below, and simply to enact that if you date a note at a particular place, a notice addressed and mailed to you there, without reference to your actual place of residence or business, shall be sufficient. If you wish a notice sent or mailed to any other place, you must under your signature on such note designate it. The principles enunciated in the case of *Cosgrave* v. *Boyle* (1), as to the object and policy the legislature had in view in passing this statue are, in my opinion, quite as applicable to this case, as to that case, though it is very true the point then before the court was not the same, and as I thought in that case, so I think in this case, we should give full force and effect to this enactment and not unnecessarily limit its operation, and thereby necessarily hamper commercial and banking operations, which it was obviously the object of the legislature to simplify.

STRONG, J., concurred.

HENRY, J.:—

The inconsistency of the position taken by the defendant in this case, the respondent now, is, that admitting the law to be that if this note fell due in Charlottetown, the bank there could post a letter to him at Summerside. It would go to the same office at Summerside as the notice that was posted in this case; but he says that although the law may be that you can post a notice in Ottawa to my address in Summerside, if the note falls due in the same town you cannot proceed in the same way. There is no reason at all, I think, to support such a contention. If the law allows the holder of a note to give notice through the post office 1,000 miles away, is that notice the less perfect because it is put in the identical way office in the village when the note is

(1) 6 Can. S. C. R. 165.

payable in that village? It appears to me the very moment we decide that under the Act, a notice posted from Charlottetown to Summerside would be good, we must decide that a letter by any means put into the way office or post office at Summerside is also regular. I can see no more reason for personal service where the parties reside in the same town than if he lived in another. I think, not only in the decision in the case referred to, but in others that have come before this court, according to all the authorities the contention cannot be sustained, and therefore the appeal ought to be allowed with costs.

FOURNIER, TASCHEREAU and GWYNNE, JJ., concurred in allowing the appeal with costs.

Appeal allowed with costs.

Solicitor for appellants: *E. J. Hodgson.*

Solicitor for respondent: *J. M. Sutherland.*