1880.
August 3.
" 4.
" 5.
" 6.
" 26.

Merriman *vs.* Williams.

this was my view of the case, still, seeing the great difficulty of the question, I do not feel justified in disregarding the strongly-expressed view that the question of property must be considered, and as I consider that for that purpose all the necessary parties are not before the Court, I do not dissent from the judgment of absolution from the instance. It is very desirable that the *status* of the Church of the Province of South Africa and its right to property held in trust for the Church of England should be defined as soon as possible, and therefore it is, perhaps, better that my doubts are not shared by my brother judges, and that they are not well founded, as it is to be presumed they are not, as the case can be taken at once to the Privy Council, where these matters can be finally, if only partially, decided. I say partially, for I have a firm conviction that nothing short of an Act of Parliament can finally and satisfactorily settle the question of property. I strongly advise the Church of the Province of South Africa to modify its constitution and canons, and to apply to Parliament.

[Plaintiff's Attorneys, TREDGOLD & HULL.
Defendant's Attorneys, FAIRBRIDGE, ARDERNE & SCANLEN.]

Note.—The judgment of the Supreme Court in this case was confirmed on appeal by the Privy Council. For the judgment of the Privy Council, see Appendix to this volume, p. 196.

KERR *vs.* DONIAN.

Cheques.—Effect of delay in presenting them for payment upon the rights of parties.

On the 14*th of April, one T. drew a cheque on the local branch of the Standard Bank in favour of one K. On the* 16*th of April K. paid it to one D., who on the* 17*th paid it to one B. The cheque was not presented to the bank until June, when there were no funds to meet it, though there had been funds in the interval. D. paid the amount of the cheque to B., and brought action in the R. M. Court against K. as indorser, and obtained judgment.* Held,

on appeal, that D. had been guilty of negligence in not presenting the cheque in time; that the negligence of K. in not cashing the cheque at once was no answer in favour of D., since it had not deprived D. of his remedy against T., and that therefore the decision of the R. M. must be reversed.

1880.
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" 30.
Kerr *vs.* Donian

Appeal from a judgment of the Resident Magistrate of East London.

The facts of the case were as follows :—

On April 14th, 1880, one J. C. Thompson drew a cheque on the Panmure branch of the Standard Bank in favour of Kerr. On April 16th Kerr paid it to Donian, who on April 17th paid it over to a fourth party. The cheque was not presented at the bank until June, when there were no funds to meet it, though there had been funds in the interval. Thompson had left the colony. Donian thereupon paid the amount of the cheque to the fourth party, and sued Kerr in the Magistrate's Court as indorser. The Magistrate gave judgment in favour of Donian for the amount of the cheque.

The defendant Kerr appealed.

Leonard, for appellant. Reasonable diligence should have been used in cashing the cheque. It was proved that there would have been funds in the Standard Bank to meet it between the 19th of April and the 10th of May. *Byles on Bills of Exchange* (pp. 124, 297, 289); *Prideaux* vs. *Criddle* (L. R. 4 Q. B. p. 461).

Maasdorp, contra. Appellant himself has been guilty of negligence in not cashing the cheque at once.

Cur. adv. vult.

Postea (*Aug.* 30),—

De Villiers, C.J. :—In this case the plaintiff sued defendant for £4, the amount of a cheque drawn on the 14th of April, 1880, by J. C. Thompson on the Panmure branch of the Standard Bank, in favour of the defendant, of which plaintiff is now the legal holder. The evidence shows that this cheque was drawn on the 14th of April, and on the

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16th it was given to the plaintiff, who on the day following parted with the cheque in favour of one of his own *employés*. The cheque then passed from hand to hand, and was not presented to the bank until two months later on, and when it was presented it was found there were no funds to meet it, although there had been funds in the interval. Subsequently the plaintiff paid the amount of the cheque to the person to whom he had given it, and then brought his action against the defendant as prior indorser. Now it is clear that the indorsee has no remedy as against the indorser, if the indorsee has been guilty of negligence in not presenting the cheque at the proper time. The only question which can arise is whether the negligence of the defendant himself is any answer in favour of the plaintiff. The plaintiff says that the defendant got the cheque on the 14th of April, and did not cash it, as he might have done, at the bank, but two days afterwards parted with it to plaintiff. The question is whether this negligence on the part of the defendant is any answer in the mouth of the plaintiff? I think it is not, and for this reason: that the plaintiff still has his remedy as against the drawer, and that remedy has not been lost by the negligence of the defendant. He would only have lost that remedy in case the drawer had suffered actual damage through the two days' delay. Moreover, the plaintiff took the cheque knowing it had been drawn two days before. There is nothing to show that any loss has been sustained on the part of the drawer, and therefore the plaintiff still has his remedy against the drawer. The Court must reverse the decision of the Magistrate, and give judgment in favour of the defendant, with costs. The appeal will therefore be allowed.

DWYER and SMITH, JJ., concurred.

[Appellant's Attorneys, J. C. BERRANGÉ & SON.
Respondent's Attorneys, J. & H. REID & NEPHEW.]