

SECOND DIVISIONAL COURT.

MARCH 31ST, 1916.

## IMPERIAL BANK OF CANADA v. KEAM.

*Promissory Notes—Actions against Makers—Notes Made for Accommodation of Customer of Bank and Discounted by Bank—Holder in Due Course—Defence—Release by Dealings of Bank with Customer—Onus—Security—Entry in Pass-book—Mistake—Estoppel.*

Appeals by the defendant in this action and each of the defendants in two other actions brought by the same plaintiffs from the judgment of COATSWORTH, Jun. Co. C.J., who tried the three actions together, in the County Court of the County of York, in favour of the plaintiffs in each case, without costs.

The actions were brought upon promissory notes made by the defendants respectively; the defence was, that the notes were made for the accommodation of the payee, a customer of the plaintiffs, who had become insolvent, and that the defendants were released by the plaintiffs' course of dealing.

The appeals were heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

G. H. Shaver, for the appellants.

A. McLean Macdonell, K.C., and J. S. Duggan, for the plaintiffs, respondents.

MEREDITH, C.J.C.P., read a judgment in which he said that the plaintiffs were holders in due course of all the promissory notes which constituted the subject-matter of these actions, and so were *primâ facie* entitled to the judgment pronounced in their favour at the trial; the onus was upon the defendants to free themselves from that liability.

That the defendants never had any value for the making of the notes, and that they were made solely for the accommodation of the payee, did not help them. The notes were given for the purpose of being negotiated by the payee with the plaintiffs, and were so negotiated.

One of the defendants testified that, when he gave his note, there was an agreement by the plaintiffs with him that he was not to pay it. But, if such obligations could be got rid of by such evidence, what transaction of the kind could stand?

Then it was said that, in consideration of some security being given by the payee of the notes to the plaintiffs, and of the sale of that security with the assent of the payee, the plaintiffs pro-