SECOND DIVISIONAL COURT APRIL 29TH, 1919.

TENNESSEE FIBRE CO. v. SMITH.

Promissory Note—Action Brought in Name of Company Having Interest in—Note Payable to Solicitors for Company—Note Endorsed by Solicitors but not until after Action Brought—Action Begun by Specially Endorsed Writ in County Court—Judgment for Plaintiff Company Entered in County Court without Amendment of Writ—Rights Determinable as of Date of Writ, but Proceedings not a Mere Nullity—Addition of Solicitors as Plaintiffs as of Date of Writ—Power of Appellate Court to Make Amendment without Request.

AN appeal by the defendant from the judgment of the County Court of the County of York (DENTON, Jun. Co. C.J.), in favour of the plaintiffs, in an action upon a promissory note. The proceedings were taken under the Rules respecting specially endorsed writs. Several points were taken on the appeal. In respect of the first point the facts were as follows. The defendant owed to the plaintiffs, who had their head office in Memphis, Tennessee, a considerable sum, and it was arranged that he should give a note for the amount to Messrs. MacGregor & MacGregor, of Toronto, solicitors for the plaintiffs, which was done. The note became due and was not paid; the plaintiffs sued in the County Court of the County of York, by Messrs. MacGregor & MacGrego , their solicitors, but without their endorsing the promissory note sued upon. The note was, however, endorsed before the hearing in the Coun'y Court.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

Erichsen Brown, for the appellant.

J. P. MacGregor, for the plaintiffs, respondents.

THE COURT dismissed the appeal upon all the grounds taken.

In respect of the first point it was held (1) that the rights of the plaintiffs must, in the absence of an amendment, be determined as of the teste of the writ, and consequently judgment should not have been entered for the plaintiffs without an amendment.

(2) Following Thompson v. Equity Fire Insurance Co. (1908), 17 O.L.R. 214; reversed in the Supreme Court of Canada, Equity Fire Insurance Co. v. Thompson (1909), 41 Can. S.C.R. 491; but reinstated in the Judicial Committee, Thompson v. Equity Fire Insurance Co., [1910] A.C. 592; that the plaintiffs had an