

In his review of the evidence, the magistrate stated that the evidence of Gray was not used or considered as evidence against the defendant.

Little, if any, reliance could be placed on the certificates of the magistrate as to what did or did not actuate him in making the conviction.

The learned Judge finds that, notwithstanding the magistrate's statement to the contrary, he was in fact influenced by the evidence which he improperly admitted; and that, upon the authority of *Rex v. Melvin* (1916), 38 O.L.R. 231, the conviction should be quashed.

*Order quashing conviction without costs.*

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BURTON V. CUNDLE—LATCHFORD, J.—JUNE 25.

*Promissory Notes—Collateral Agreement—Notes Payable only upon Event which did not Happen—Delivery up and Cancellation of Notes Held by Payee—Notes Transferred to Third Person—Claim for Damages for Transferring Notes—Validity of Agreement—Counterclaim—Fraud and Misrepresentation—Failure to Prove.]—* An action to compel the delivery up and cancellation of certain promissory notes held by the defendant, delivered to him by the plaintiff in Chicago on the 28th September, 1915, and for damages. The defendant counterclaimed to set aside an agreement made on that date, on the ground of fraud and misrepresentation, or, in the alternative, for payment of the notes referred to. The action and counterclaim were tried without a jury at Toronto. LATCHFORD, J., in a written judgment, said that the plaintiff was entitled to the delivery up and cancellation of the promissory notes. By the agreement entered into on the 28th September, 1915, the payment of these notes was dependent upon the receipt by the plaintiff of payments agreed to be made to him by persons to whom he had sold, with other property, one of the two parcels of mining land on which it was supposed that the defendant had an option. The event upon which liability upon the notes held by Cundle was to arise did not happen, and the notes must be declared cancelled Judgment accordingly. But the plaintiff could not recover damages for his loss resulting from the course pursued by Huff, the endorsee of the notes, in discounting them. The plaintiff was aware that Huff had acquired a half interest in the option, and that one set of the notes was intended to be delivered to Huff. It had not been shewn that Cundle was in any way responsible for what