

BANK OF TORONTO V. HALL—BRITTON, J.—MAY 25.

Promissory Note — Application of Payments — Renewal — Waiver — Guaranty — Misrepresentation — Findings of Fact of Trial Judge.]—Action to recover \$1,300, the amount of a promissory note made by the defendant Hall and endorsed by the defendant Bennett, and to recover \$2,500, the amount of the indebtedness of Hall to the plaintiffs, guaranteed by Bennett by a written instrument. Hall made no defence, and judgment by default was signed against him. Bennett defended, setting up that he did not know, when signing the guaranty sued upon, what the real effect of the document was. The action was tried without a jury at Cobourg. BRITTON, J., said that the allegations of the defendant Bennett amounted to a charge of a fraudulent misrepresentation by the manager of the plaintiffs' bank at Port Hope, whereby Bennett was induced to sign a document now produced as a guaranty which Bennett did not understand to be a guaranty. The learned Judge was unable to find that this defence had been made out. The defence as to the note sued upon was, that it was to be taken care of by the plaintiffs out of the money which would pass through the plaintiffs' hands going to the credit of the defendant Hall from contracts executed by him, and that the plaintiffs failed to apply upon the note the moneys so received. The learned Judge finds that there was no fraud, and that Bennett, by renewing the note, must be deemed to have waived his right to complain of any misapplication prior to renewal. Judgment for the plaintiffs for the amounts of the note and guaranty, with interest, amounting in all to \$3,986.62, with costs. M. K. Cowan, K.C., for the plaintiffs. F. M. Field, K.C., for the defendant Bennett.

HUME V. McCARTHY—LENNOX, J.—MAY 26.

Dentistry—Charge for Services—Counterclaim for Malpractice — Evidence — Onus — Findings of Fact of Trial Judge.]—Action by a dentist to recover a sum alleged to be due for dentistry work done for the defendant's daughter. Counterclaim by the defendant for malpractice. The learned Judge, who tried the action without a jury, said that he entertained no doubt as to the defendant's entire good faith in resisting the plaintiff's claim and claiming damages against him. If the alleged malpractice had been established, and with the result complained of, the refusal to pay the balance of the account and the claim of