

to be affirmed, in the absence of any valid technical objections to the procedure before him.

I think the appeal should be dismissed with costs.

MACLAREN, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., MACLENNAN and GARROW, JJ.A., concurred.

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SEPTEMBER 19TH, 1904.

C.A.

### MERCHANTS BANK v. GRIMSHAW.

*Promissory Notes — Action against Indorser — Indorsements Procured by Fraud — Discount — Notice to Agent of Holder — Notice to Bank — Property in Notes not Passing — Conflicting Evidence.*

Action to recover the amount of two promissory notes made by defendant Grimshaw and indorsed by defendants Irvine and Evans. No defence was made by defendants Grimshaw and Evans.

Defendant Irvine defended on the ground that his indorsement had been procured by fraud practised upon him by defendants Grimshaw and Evans, of which plaintiffs had notice and knowledge before they became the holders of the notes, and that they are not holders thereof in due course.

The notes were made by Grimshaw payable to Irvine, who, for Grimshaw's accommodation, indorsed them in blank. They were then handed by Grimshaw to one Robson, an agent of Evans, who delivered them to Evans, who subsequently delivered them to the plaintiffs for discount.

FALCONBRIDGE, C.J., who tried the action without a jury, found (2 O. W. R. 729) that Irvine's indorsement was procured by fraud, that Evans was not a holder in due course, and that before the property in them passed to plaintiffs they had notice and knowledge of the fraud and the infirmity of Evans' title, and he dismissed the action as against Irvine.

From this decision plaintiffs appealed.

W. R. Riddell, K.C., and G. L. Smith, for appellants.

G. F. Shepley, K.C., and W. E. Middleton, for defendant Irvine.