

FIRST DIVISIONAL COURT.

NOVEMBER 6TH, 1916.

BENDER v. TORONTO GENERAL TRUSTS
CORPORATION.

Evidence—Action against Executors of Deceased Mortgage—Payment Made on Account of Mortgage—Corroboration—Finding of Trial Judge—Appeal—Admission of Additional Evidence—Evidence Act, R.S.O. 1914 ch. 76, sec. 12—Costs.

Appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., ante 9.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

D. L. McCarthy, K.C., and D. B. White, for the appellants.
A. C. Kingstone, for the defendants, respondents.

Additional evidence was allowed to be put in upon the appeal.

The judgment of the Court was delivered at the conclusion of the hearing by MEREDITH, C.J.O., who said that he was satisfied from communication he had with the Chief Justice of the King's Bench that, if the additional evidence which had come to hand since the trial had been before him, he would have come to a different conclusion, and would have held that there was corroboration of the testimony of the appellant Hiram Bender sufficient to satisfy the statute. All the members of this Court agreed in that view.

There were but three ways in which the note given by the appellant for \$1,000 could be accounted for: it was a gift, or it was for an advance made by the deceased Lowell, or, as the appellant contended, a payment on account of the mortgage.

The bank-account had been produced, as well as the ledger, and they shewed that Lowell, at the time the note was given, was "hard up," and that his account was overdrawn.

He was in this position when, as the appellant testified, Lowell came to him and asked him for a payment of \$1,000 on account of the mortgage. The appellant said that Lowell told him that his bank was pressing him for payment; and, in reply to Lowell's request, the appellant said that he could not let him have the money then, but that he had money coming in in three months, and that he would give him a note. A promissory note was accordingly given, and the books of the bank shewed that it was discounted.