

The Ontario Weekly Notes

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HIGH COURT OF JUSTICE.

DIVISIONAL COURT.

JANUARY 20TH, 1910.

FARMERS BANK v. BIG CITIES REALTY AND AGENCY
CO.

*Summary Judgment—Motion for—Affidavit in Reply—Refusal to
Allow Cross-examination on—Appeal—Case Remitted to Court
below—County Courts Act, sec. 54.*

An appeal by the defendants from an order of DENTON, one of the junior Judges of the County Court of York, under Con. Rule 603, allowing the plaintiffs to enter final judgment for the amount of their claim upon a promissory note.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL and LATCHFORD, JJ.

T. Hislop, for the defendants.

W. H. Hunter, for the plaintiffs.

RIDDELL, J.:—The action was upon a promissory note purporting to be made by the defendants. The affidavit for speedy judgment is plainly sufficient; and no objection is taken on that ground. Upon the return of the motion, affidavits were filed by the defendants which, unanswered, would entitle defendants to a dismissal of the motion. But an affidavit was filed in reply by the solicitor for the plaintiffs. Counsel for the defendants asked that he be allowed to cross-examine the deponent upon his affidavit, but this the learned County Court Judge refused. This affidavit is recited in the formal judgment as part of the material.

I am of opinion that the defendants should have had an opportunity of disproving, if they could, the statements in the