

1889. J. F. pleaded that under the will he was entitled to postpone payment until five years from the testator's death, and that the action was premature.

*Held*, affirming the judgment of the court below, that J. F. was entitled under the will to five years to make the division contemplated, and that he had not renounced such right by signing the statement showing the amount due on the 30th April, 1889.

Appeal dismissed with costs.

June 24, 1893.

MILLER V. PLUMMER.

Ontario.]

*Promissory note—Accommodation—Bad faith of holder—Conspiracy.*

P. endorsed a note for the accommodation of the maker who did not pay it at maturity, but having been sued with P. he procured the latter's endorsement to another note agreeing to settle the suit with the proceeds if it was discounted. He applied to a bill broker for the discount, who took it to M., a solicitor between whom and the broker there was an agreement by which they purchased notes for mutual profit. M. agreed to discount the note. M.'s firm had a judgment against the maker of the note, and an arrangement was made with the broker by which the latter was to delay paying over the money so that proceedings could be taken to garnishee it. This was carried out; the broker received the proceeds of the discounted note, and while pretending to pay it over was served with the garnishee process and forbidden to pay more than the balance after deduction of the amount of the judgment and costs; and he offered this amount to the maker of the note which was refused. P., the endorser, then brought an action to restrain M. and the broker from dealing with the discounted note, and for its delivery to himself.

*Held*, affirming the decision of the Court of Appeal, that the broker was aware that the note was endorsed by P. for the purpose of settling the suit on the former note; that the broker and M. were partners in the transaction of discounting the note, and the broker's knowledge was M.'s knowledge; that the property in the note never passed to the broker, and M. could only take it subject to the conditions under which the broker held it; that the broker not being the holder of the note there was no debt due from him to the maker, and the garnishee order had no