

MACLAREN, J.A.

OCTOBER 29TH, 1906.

C.A.—CHAMBERS.

CROWN BANK OF CANADA v. BRASH.

Leave to Appeal to Court of Appeal—Order of Divisional Court Reversing Judgment at Trial—Grounds of Appeal—Judicature Act, sec. 76 (1) (g).

Motion by defendant Brash for leave to appeal to the Court of Appeal from order of a Divisional Court, ante 400, reversing judgment of TEETZEL, J., who tried the case with a jury.

G. H. Watson, K.C., for applicant.

F. Arnoldi, K.C., for plaintiffs.

MACLAREN, J.A.:—The action is based upon promissory notes discounted by the bank at the request of one Campbell, purporting to act for a firm composed of defendant and Campbell, but which are said to be forgeries and discounted without the authority or knowledge of defendant. The jury found that the bank manager had notice or knowledge of the want of authority of Campbell, but also found that he acted honestly and in good faith. Teetzel, J., relying on the first of these answers, dismissed the action; the Divisional Court, acting on the latter answer, gave judgment for the bank.

Defendant Brash urges the following as special reasons sufficient under sec. 76, sub-sec. 1 (g), of the Judicature Act, to entitle him to such leave: that the amount in question is nearly \$1,000, being said to be \$940; that the Divisional Court reversed the decision of the trial Judge and set aside the answer as to notice or knowledge without holding that there was no evidence to be submitted to the jury upon this point; that the answer as to good faith did not override that as to notice, and was not sufficient alone under the Bills of Exchange Act to entitle the bank to judgment; that there was such evidence and sufficient to justify the answer as to notice; that if the trial Judge had been in the Divisional Court, defendant could have appealed