

action, and that the bringing of the present action is vexatious and harassing to defendants.

During the argument I suggested that, if the same questions were raised in both actions, defendants should consent to be bound by the judgment of the Court of Appeal, if the second action were stayed. Counsel for defendants, however, considered (notwithstanding the statement in Mr. Levy's affidavit) that a question was raised in the second action which was not raised in the first.

If the questions in both actions are the same, defendants should be bound by the judgment in the first action. If the questions are not the same, then no stay should be granted.

If defendants consent within five days to be bound in this action by the judgment of the Court of Appeal in the first action, the order of the Master in Chambers will be varied accordingly. If such consent be not given, the order of the Master will be set aside with costs in the cause to plaintiffs.

JANUARY 26TH, 1905.

DIVISIONAL COURT.

SOVEREIGN BANK v. GORDON.

Promissory Note — Holder in Due Course — Indorsement in Blank — Special Indorsement by Transferee — Attempted Cancellation and Delivery to Further Transferee — Title — Right of Action — Undertaking — Amendment — Bills of Exchange Act.

Action in the County Court of York upon a promissory note made by defendants for \$433.33, dated 19th November, 1901, payable 1st March, 1903, to one G. M. Boyd or order, of which plaintiffs alleged themselves to be the holders in due course.

Defendants denied that plaintiffs were holders of the note, and alleged that the note had been obtained by fraud on the part of the payee.

After issue joined defendants moved to change the place of trial from Toronto to Sault Ste. Marie. The motion was refused upon plaintiffs undertaking to prove at the trial that they were entitled to the rights of a holder in due course, as defined by sec. 29 of the Bills of Exchange Act, and in default that the action should be dismissed.

The action was tried by MORGAN, Jun. J. of the County Court of York, when the following facts appeared:—

G. M. Boyd, the payee of the note, indorsed it in blank and delivered it to a firm of Graham Bros., about 10 months