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APPELLATE DIVISION.

MARCH 2ND, 1915.

*MERCHANTS BANK OF CANADA v. BURY.

Promissory Note—Addition of Words “Account of Lumber to be Shipped”—Executory Consideration—Validity of Note as Negotiable Instrument.

Action upon a promissory note, brought in the County Court of the County of Middlesex.

Shields Brothers had a sawmill near Alvinston; on the 2nd December, 1913, they owed their bankers, the plaintiffs, \$1,700 on their own note then current, and about \$800 on overdrawn account. The bank manager asking for security for the overdraft, Shields Brothers on the 6th December, 1913, drew a bill of exchange on the defendants in favour of the plaintiffs for \$800, payable two weeks after date, and gave it to the plaintiffs' manager at Alvinston, who forwarded it for acceptance. The plaintiffs then held a letter of hypothecation from Shields Brothers.

A few days afterwards the defendants returned the draft, unaccepted, with the note now sued on, made by the defendants, dated the 8th December, 1913, for \$800, payable to the order of Shields Brothers at the Royal Bank, four months after date. In the right hand lower corner the lithographed words “Valued received” had a line drawn through them, and above was written “account of lumber to be shipped.” A few days afterwards, Shields Brothers endorsed this note to the plaintiffs.

On the 12th January, 1914, Shields Brothers gave the plaintiffs their note for \$2,332.50—the amount then due for overdraft being added to the former note for \$1,700. This note was renewed from time to time and reduced by Shields Brothers. The last renewal, for \$1,771.35, fell due on the 29th November, 1914, and was held overdue by the plaintiffs.

*This case and all others so marked to be reported in the Ontario Law Reports.