

the service of the writ on a motion made therefor than to allow the case to proceed at the trial with a certainty of its ultimate dismissal.

O'Donoghue, for appellants. *Tilley*, for respondents.

Street, J., Britton, J.]

MATTHEWS v. MARSH.

[March 21.

Promissory note—Accommodation maker—Renewal note obtained by fraud of principal maker—Right to sue on original note—Division Court—Power to amend.

On April 4, 1899, the above joined with one McDonald in a promissory note for \$130 in favour of the plaintiffs for the accommodation of the latter. When it became due McDonald brought a renewal note, purporting to be signed by the defendant, which the plaintiffs accepted and gave up the original note stamped "paid." McDonald becoming insolvent and the plaintiffs failing to get payment of the renewal note out of his estate, sued the defendant upon it before a Division Court judge and a jury, when the defendant swore he never signed the renewal note, but nevertheless there was a verdict for the plaintiffs. A new trial was then granted, resulting in a verdict for the defendant. A further new trial then being granted, the judge at the trial allowed the plaintiffs to claim in the alternative upon the original note, as well as claiming upon the renewal note, and to amend their claim accordingly. The jury then returned a verdict for the plaintiffs on the original note. The defendant applied for a new trial which was refused, and he then appealed to this Court.

Held, 1. The Division Court judge had jurisdiction to amend the plaintiff's claim as he had done under Rule 4 of the Division Courts.

2. The renewal note being a forgery so far as the defendant's signature was concerned, and the plaintiffs, therefore, having been induced by McDonald's fraud to give him up the original note, the plaintiffs retained a right to recover in equity on the original note.

Hewson, K.C., for plaintiffs. *Gunn*, K.C., for defendant.

Boyd, C.]

BURKHOLDER v. GRAND TRUNK R.W. CO.

[March 25.

Damages—Death by accident—Apportionment between widow and children.

An action brought against a railway company by a widow on behalf of herself and four infant children, aged respectively seven, five, three and one year, to recover damages for the death of her husband through the company's alleged negligence, was settled by the company paying \$4,800. On application to a judge the amount was apportioned by giving the widow \$1,200 and each of the children \$900, the widow also to be paid for the children's maintenance, \$200 a year half yearly for three years, the fact of