

the weight of the land requiring lateral support, and whether the same subsidence would have occurred if the land had been without the buildings. But all the evidence enables us to ascertain these matters in the plaintiff's favour, and there would be no purpose in further litigation.

The judgment is affirmed with costs.

DIVISIONAL COURT.

MARCH 16TH, 1911.

*MERCHANTS BANK v. THOMPSON.

Promissory Note—Liability of Accommodation Makers—Note Deposited by Customer with Bank for Collection—Right of Bank to Lien for Indebtedness of Customer Arising after Maturity of Note—Right Subject to Equities between Original Parties—Bills of Exchange Act, secs. 54, 70—Evidence—Partnership Account—Failure of Consideration.

Appeal by the defendants from the judgment of BOYD, C., 1 O.W.N. 1015.

The appeal was heard by FALCONBRIDGE, C.J.K.B., BRITTON and LATCHFORD, JJ.

Travers Lewis, K.C., and J. W. Bain, K.C., for the defendants.

J. F. Orde, K.C., for the plaintiffs.

FALCONBRIDGE, C.J.:—This appeal comes before us in unsatisfactory shape. The action was brought upon a promissory note. Two of the original parties thereto are not parties to this action, viz., the two principals in the transaction upon which the note was based—Fox, the payee, and Living, both resident at Vancouver.

The note is as follows:—

\$2,000.00.

Due Oct. 4/07.

Vancouver, July 1, 1907.

Three months after date I promise to pay to the order of C. H. Fox at the Union Bank of Canada, Vancouver, the sum

*To be reported in the Ontario Law Reports.