

"The plaintiffs submit that the said resolution and the passing thereof as aforesaid was illegal, fraudulent, and void."

G. M. Kelley, for defendant Wood.

J. A. MacIntosh, for plaintiffs.

THE MASTER.—Particulars under paragraph 10, shewing in what respects the provisions of the Acts were not complied with, should be given: Pullen v. Snelus, 40 L. T. N. S. 363. Paragraph 11 is not an allegation, but merely a submission, and no particulars are necessary.

Order made for particulars of paragraph 10. Costs in the cause.

OCTOBER 29TH, 1902.

DIVISIONAL COURT.

CONLEY v. ASHLEY.

Promissory Note—Action on—Defence of no Consideration—Evidence of Contemporaneous Oral Agreement—Contradictory Written Documents—New Trial—Objection to Evidence not Taken at Trial—Discretion of Court.

Appeal by plaintiff from order of Judge presiding in 1st Division Court in county of Hastings refusing a new trial after a verdict for defendant on a trial with a jury in that Division Court. Action to recover \$100, being the balance unpaid upon a note for \$600 made by defendant, dated 15th December, 1897, payable six months after date to Cynthia A. Loucks or order, and by her indorsed after its maturity, for a valuable consideration, to plaintiff. The defence was that defendant received no consideration for the making of the note, and that, at the time he signed it, it was agreed between him and Albert Loucks, the husband of the payee, that he was not to be personally liable upon it, but was to pay it out of certain moneys coming to his hands for one Harford Ashley. The Judge left the matter to the jury as one entirely at large upon the question of consideration, and open to them, without special regard to the writings, and to be determined upon the whole evidence.

A. B. Aylesworth, K.C., for plaintiff.

E. G. Porter, for defendant.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J.) was delivered by

STREET, J.—The case went to the jury upon improper evidence and with a charge in which the true questions for their determination were not presented. The evidence of the defendant, which was admitted to prove that, although he signed the note in question and delivered it to Albert Loucks,