

WINCHESTER, MASTER.

JANUARY 23RD, 1903.

CHAMBERS.

MERCHANTS BANK v. IRVINE.

*Summary Judgment—Action on Promissory Notes—Defence of Fraud
—Notice—Costs of Motion where Dismissed.*

Motion by plaintiffs for summary judgment under Rule 603. The defendants alleged that the promissory notes sued on were obtained by fraud, and that they notified the plaintiffs of this fact shortly after the dates of the notes, and previous to the full payment of the proceeds by them to their customer for whom they discounted the notes.

G. L. Smith, for plaintiffs.

W. E. Middleton, for defendants.

THE MASTER held, on the facts disclosed by the cross-examination of parties on their affidavits, that the action must go to trial; also, that the motion should not have been made in view of *Farmer v. Ellis*, 2 O. L. R. 544, and *Fuller v. Alexander*, 47 L. T. N. S. 443, and the costs of the motion other than of the examinations should be costs to defendants in any event. The examinations to be considered as examinations for discovery, without prejudice to further examinations after pleadings are delivered if the parties so desire.

MEREDITH, J.

JANUARY 23RD, 1903.

CHAMBERS.

RE WILLIAMS.

Will—Construction—Bequest to "all my Children"—Representatives of Deceased Child.

Motion by James Ailles, one of the executors of the will of Arscott Williams, for an order construing the will and determining whether Bertram E. Webster, Henry A. Webster, Ida M. Webster, and Ernest Webster (an infant), the children of Annie Webster, who was a daughter of the deceased and died before the execution of the will, are entitled between them to a one-fifth share or interest in the estate of the deceased, under his will, as the heirs of their mother. The testator died on the 26th June, 1893. The will, so far as material, was as follows: "I direct that after my death all my property, real and personal, of whatsoever nature and wheresoever situated, be sold as soon as may be done without loss in the opinion of my executors, and that the proceeds be invested for the sole and only benefit of my wife during her lifetime. I direct that after her death the principal money so invested be divided amongst all my children in