

SUPREME COURT OF NEW SOUTH WALES

City Bank vs. Rowan

A Bill Payable to a Fictitious or Non-existing Person is Payable to Bearer

Action on a dishonored note for £574, dated 22nd Dec., 1891, made by defendants, payable to J. Shackell & Co., or order, four months after date, and purporting to be endorsed by J. Shackell & Co. to Jones & Co., and by the latter to the plaintiffs.

The circumstances were these: In Dec., 1891, a man named Wm. Shackell called on the defendants at their warehouse in Sydney, and represented that he had 150 bales of wool packs for sale on account of Jas. Shackell & Co., of Melbourne, and negotiations for their sale took place. In the course of the negotiations Wm. Shackell introduced to the defendants a man whom he represented to be a Mr. Jones, carrying on business as Jones & Co., who he alleged was the agent in Sydney of James Shackell & Co. The price being agreed on, a sale note was signed "Wm. Shackell, for James Shackell & Co." The following day a document purporting to be a store warrant for the bales of wool packs was handed over to the defendant, who thereupon handed a promissory note, the subject of the action, to Jones, who gave a receipt for the promissory note, which he signed "J. Shackell & Co., per Jones & Co." The defendants discovered the fraud of the two men, Wm. Shackell and Jones, who had no wool and no authority to act for Jas. Shackell & Co. or any other firm. Shackell was afterwards convicted of conspiracy, but Jones absconded. Meanwhile they had between them forged on the note one endorsement purporting to be that of J. Shackell & Co., without recourse, and another endorsement purporting to be that of Jones & Co., who discounted the note with the plaintiff bank at the current rate, the bank relying on the defendants' signature, and discounting a *bona fide* note in the ordinary course. The defendants, on becoming aware of the fraud, and that the promissory note was under discount with the plaintiff bank, gave notice to the bank in February, 1892, that they repudiated the contract of sale and any liability in respect of the note on the ground that it had been negotiated by means of a forged endorsement. The note was duly presented for payment