

HON. MR. JUSTICE MIDDLETON.

JUNE 16TH, 1914.

ROYAL BANK v. SMITH.

6 O. W. N. 605.

Promissory Notes — Indebtedness of Makers to Payee—Finding of Trial Judge against Plea that Notes Made for Accommodation of Payee—Third Party Issues—Indemnity—Judgment—Enforcement.

P. and S. were the makers of two promissory notes in favour of one P. S. had conducted negotiations in behalf of a syndicate which was being formed for the purpose of purchasing land from R. Stock certificates and two notes were handed to the solicitor of R. in part payment for the land. The certificates represented the same amount of money as the two notes. The question was whether the stock certificates or the notes were given as collateral security to the other.

MIDDLETON, J., *held*, upon the evidence, that the notes were given as payment and the stock as collateral security and that, therefore, P. and S. were liable upon them. Accordingly, P. and S. were not entitled to indemnity from R. since their contention that the notes were made for the accommodation of R. failed.

Trial of third party issue at Hamilton on 11th June, 1914.

S. H. Bradford, K.C., for defendants Smith and Puddicombe.

S. F. Washington, K.C., for Reinke, third party.

HON. MR. JUSTICE MIDDLETON:—On the 11th November, 1912, Messrs. Puddicombe and Smith made a promissory note in favour of Reinke for \$10,000; and on the same date Smith made another promissory note, also in favour of Reinke, for \$5,000. The bank brought action upon these two notes and the defendant resisted payment, claiming that they were accommodation notes and there was no liability as between the original parties.

It appearing that the notes were held by the bank as collateral security for advances made to Reinke, and that the bank held in good faith and without notice, the actions were consolidated and judgment was given against both defendants for \$9,220.50, the amount due to the bank at the date of the judgment, 16th February, 1914. Smith and Puddicombe now claim to recover this amount against Reinke, upon the theory that the debt is his and not theirs; and Reinke claims to recover against them the amount of the