

MARCH 28TH, 1906.

C.A.

BANK OF MONTREAL v. SCOTT.

Evidence—Examination for Discovery of Ex-officer of Plaintiff Banking Company — Non-admissibility — Proof of Admissions by Stenographer as Witness—Rule 439 (a)—Promissory Note—Wife Indorsing for Benefit of Husband —Improper Admission of Evidence—New Trial.

Appeal by plaintiffs from judgment of BRITTON, J., 6 O. W. R. 411, dismissing action as against defendant Margaret Scott.

G. F. Shepley, K.C., for plaintiffs.

M. Wilson, K.C., for defendant Margaret Scott.

The judgment of the Court (MOSS, C.J.O., OSLER and GARROW, J.J.A.), was delivered by

OSLER, J.A.:—The action is upon a promissory note for \$5,000, indorsed by defendant Margaret Scott . . . to plaintiffs. . . . Defendant (a married woman) denied the indorsement of the note, and pleaded certain facts which, it was contended, relieved her from all liability thereon under the recent decision of the Supreme Court of Canada in *Adams v. Cox*, 35 S. C. R. 393. . . . Britton, J., held that the case was governed by that decision, and dismissed the action.

On the opening of the defence the shorthand writer who had taken the examination for discovery of one Glass, who had been the manager of plaintiffs' branch at Chatham when the note was taken, was called, and she (the shorthand writer) was asked, against objection, what Glass had stated on such examination. The evidence was admitted subject to the objection, and the witness verified what Glass had then said as to the circumstances under which the note was acquired by the bank.

During the discussion which arose as to the admissibility of the evidence it was stated by plaintiffs' counsel, without contradiction, that when Glass was examined he was an ex-officer of the bank. Glass was not himself called as a witness, nor was defendant's husband nor defendant herself.

In reply, the depositions of defendant taken upon her examination for discovery were put in and read.

Upon the whole of this evidence the trial Judge held that the defence was proved.