

CAN.
S. C.
LECOMTE
v.
O'GRADY.
—
Brodeur, J.

An action had been brought on a document claimed to be a promissory note, and a stated case was prepared by the parties which, after reciting the document, asked the opinion of the court as to whether it was a promissory note or not. The trial judge held that the document in question was not a promissory note. An appeal was taken and the Court of Appeal held that the document was a promissory note. The defendant now appeals to this court.

It seems to me that we have jurisdiction. The right which has been determined by the court below is a substantive right, and, in view of the Supreme Court Act as amended in 1913, we have the power to determine now which of the parties was right as to their contentions affecting the document in question.

The motion to quash should be dismissed with costs.

On a later day the appeal was heard on the merits.

G. F. Henderson, K.C., for appellant; *E. K. Williams*, for respondent.

Davies, C.J.

DAVIES, C.J.:—This appeal comes to us in the form of a stated case, and we are asked whether a certain document is a promissory note or not.

The document in question was on a printed form, except the memorandum in the lower left-hand corner, and reads as follows:—

Winnipeg, 1st December, 1910.

On the 15th of September, 1911, without grace, after date I promise to pay to the order of O'Grady, Anderson and Co. Ltd., at the Bank of Nova Scotia, Winnipeg, the sum of three thousand dollars.

Value received.

JOSEPH LECOMTE.

*Stock certificate for
50 shares Gas Traction Co. Ltd.
attached to be surrendered on
payment.*

I am of the opinion that the document is a promissory note, and I answer the question submitted in the affirmative.

The point to determine was whether the memorandum on the lower left corner of the note formed an integral or substantive part of the note. I am of the opinion that it did not and answer accordingly.

Idington, J.

IDINGTON, J.:—I am of the opinion that the instrument in question herein is clearly a promissory note, and hence this appeal should be dismissed with costs.