COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1883.

DORION, C. J., MONK, RAMSAY, TESSIER, BABY, JJ.

BELANGER (deft. below), Appellant, and BAXTER (plff. below), Respondent.

Promissory note obtained from the maker by fraud—Action by endorsee (before maturity) cognizant of the fraud.

Where the transfer of a note by indorsement is made before it becomes due, but the evidence shows that the note was obtained from the maker by fraud and that the holder was aware of the fraud, the case does not come within the general rule laid down in C. C. 2287, and the onus of showing that he is in good faith falls upon the holder.

RAMSAY, J. This is an action on a promissory note dated 3rd January, 1882, and payable twelve months after date. The plea is that the defendant being a person of little education, had signed this note believing he was signing an agreement by which he was to become the agent of C. B. Mahan & Co. for the sale of agricultural instruments. The transaction is clearly one of those swindling concerns of which we have seen so many got up to dupe unsuspecting country people. It is evident that this note would have been valueless in the hands of Mahan & Co., but it was transferred to the respondent before it was due—sometime, it appears, in December, 1882. The only question seems to be whether the respondent is a *bona fide* holder. It is argued that Walters was, and that he holds from Walters. But the fact is not so. Walters only held the note as collateral security—he did not discount it "out and out" as he said. He held it with a number of other notes amounting to a very large sum of money, and he was disinterested in the whole for $6000, less than half the face value of the notes. A note obtained by a gross fraud of this kind, and out of the ordinary course of business, is already open to suspicion, and the *onus* of showing that the plaintiff is a holder in good faith and for value readily falls upon him. This was formally decided in England, *Fitch & Jones*, 5 E. & B. 245; it was also decided here before the code in a case of *Withall & Ruston et al.*, 7 L. C. R., p. 399. It is, however, contended that art. 2287 C.C. has laid down a new rule on the point. This Court has been unable to adopt this view. There is nothing to indicate any intention on the part of the legislature to change the existing law. Art. 2287 represents Article 9 of the 7th Report of the Commissioners, and on it (Art. 9) they make this remark:—

"The rule declared in Article 9, as to the "right to transfer a bill by endorsement after "it is due and the effect of such endorsement, "admits of no difficulty with us at the present "day; it has been the constant usage derived "from that of England, and is recognized in "a number of cases, one of which is reported "and is cited under the article."

The case referred to is that of *Wood et al., & Shaw*, 3 L. C. J., p. 175, which does not support the pretention of the respondent. The sense of the article is this, the title of the holder is perfect on the face of it, but the article does not say that the title continues to be perfect when the evidence gives rise to the presumption that the holder is in fraud, and has not given value. We have therefore maintained the old principle in two cases, one of *Robinson & Calcott*, reviewed in 2 *Thémis* 331, the other that of *Morin & Grenier*, decided in Montreal, on the 15th of September, 1877.

As to the facts of this case, it appears that Baxter held the note on an order from Mahan, who fled the country about the beginning of November, and with whom Baxter says he had had no communication since his flight; but he admits that he was aware of the rumours as to these notes having been obtained fraudulently at the time of Mahan's flight, and it appears he only produced his order in December, weeks after Mahan had disappeared. Then, when we come to examine the condition on which the notes were given up by Walters, we find that it was upon payment of Mahan's indebtedness. The transaction, then, has all the outward appearance of a withdrawal of the notes by Mahan's agent, and Baxter has not attempted to show that he withdrew these notes with his own money. We are therefore of the opinion that the judgment in this case must be reversed with costs of both Courts.

The judgment of the Court is as follows:—

"The Court having heard, etc., on the appeal from the judgment of the Superior Court sitting at the city of Quebec, in the Province of Quebec, in a suit in which James Baxter was