

CONNOR v. VROOM.

1895

Trustee—Power to borrow money—Promissory note—Charge on estate—
Exercise of power. *Feb. 20.

APPEAL from a decision of the Supreme Court of New Brunswick, reversing the judgment of the Judge in Equity in favour of the appellant.

The defendant Vroom was trustee of the estate of one Simonds, and the action was brought to recover money lent to a former trustee, one Lee. The trust deed to Lee gave him power to borrow money on mortgage. He obtained from the plaintiff \$2,000 which he represented was for the use of the estate, giving him a promissory note signed "G. H. Lee, trustee of E. I. Simonds," and indorsed by G. H. Lee.

The Judge in Equity gave judgment for the plaintiff holding that Lee having power to borrow on mortgage, was acting within his powers in borrowing from plaintiff, but if not he got the money on the promise that he would exercise the power. The Supreme Court of New Brunswick reversed this judgment, holding that there was no evidence of such promise, and the estate never having had the benefit of the money the trustee would not have been entitled to indemnity, and the plaintiff's right was only to be placed in the same position as the trustee.

The Supreme Court of Canada, after hearing counsel for appellant, dismissed the appeal without asking counsel on the other side to be heard.

Appeal dismissed with costs.

Palmer Q.C. and Baxter for the appellant.

Milledge Q.C. and Coster for the respondent.

*PRESENT:—Sir Henry Strong C.J., and Fournier, Taschereau, Sedgewick and King JJ.