

BANK OF NOVA SCOTIA *v.* FISH.

1894

Promissory note—Consideration—Accommodation—Evidence—New trial. *Nov. 9, 10.

1895

*May 6.

APPEAL from the decision of the Supreme Court of New Brunswick varying the verdict at the trial, pursuant to leave reserved.

The appellant bank brought an action against respondent on a number of promissory notes indorsed by the latter and bills accepted by him. The defence was that the bills and notes were accepted and indorsed for the accommodation of the bank, and that defendant had been induced to accept and indorse them by fraud and misrepresentation. It was proved at the trial that Morrison, the agent of the bank, had represented to defendant that the transactions were in the business and for the interest of the bank, which was engaging in matters forbidden by the Bank Act and had to adopt the course pursued by the agent.

The trial judge rejected evidence of conversation between a third party, who was on some of the paper in suit, and the agent who succeeded Morrison, as to what had taken place between such third party and Morrison in regard to some of the notes. The ground of his rejection was that the evidence was irrelevant and that it only arose out of cross-examination. He admitted other objectionable evidence, ruling that only the answer had been objected to.

A verdict was given for plaintiffs for the amount of one note and of an overdrawn account, and for defendant in respect to all other claims. The Supreme Court of New Brunswick gave the bank judgment for

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

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another and a larger note and defendant judgment for all the rest, including that on which he failed at the trial. Both parties appealed.

The Supreme Court of Canada ordered a new trial on the ground that the evidence rejected at the trial should have been admitted, as it related to a matter relevant to the issue, and that the trial judge was wrong in ruling that only the answer to another question was objected to, as there was a general objection to all the evidence at the time.

*Appeal allowed with costs
and new trial ordered. Cross-
appeal dismissed with costs.*

Borden Q.C. and Coster for the appellants.

Pugsley Q.C. for the respondent.
