

1909

*March 15.

*April 5.

PETERS v. PERRAS ET AL.

Practice—Evidence—Impeachment of testimony—Notice of imputations—Promissory note—Fraud—Suspicious circumstances—Transfer of negotiable instrument.

APPEAL from the judgment of the Supreme Court of Alberta(1), affirming the judgment of Scott J., at the trial(2), which dismissed the plaintiff's action with costs.

The action was upon a promissory note, which had been obtained by fraud and had been transferred by the payee to the plaintiff, who sought to recover upon it as a holder in due course for valuable consideration without notice of invalidity. At the trial Scott J. dismissed the action, holding that the makers were not liable, that the note, on its face, shewed that interest thereon was overdue at the time of the transfer, and, consequently, that the transferee was put upon inquiry before purchasing it, and that, this circumstance, coupled with other suspicious circumstances, prevented the plaintiff being deemed a holder in due course. The Supreme Court of Alberta, *in banco*, affirmed this decision by the judgment appealed from, and held that the burden of proving affirmatively that he became holder of the note in question honestly and in good faith had not been satisfied by the plaintiff, and that his neglect to make inquiries, though not inconsistent with good faith, constituted some evidence of bad faith.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

(1) 1 Alta. L.R. 201.

(2) 1 Alta. L.R. 1.

After hearing counsel for the parties on the appeal, the Supreme Court of Canada reserved judgment and, on a subsequent day, allowed the appeal and maintained the action with costs, the Chief Justice and Idington J. dissenting. The majority of the court were of the opinion that the courts below were not justified, under the circumstances of the case, in refusing to accept the uncontradicted testimony of a witness, (examined abroad under commission), as to particular facts, of which notice had not been given in the pleadings or otherwise, relating to circumstances relied upon as sustaining or pointing to the imputation of bad faith and no opportunity afforded to the witness of explaining or qualifying the facts or conduct on which the attack upon his veracity or honesty was based. *Browne v. Dunn*(1) applied; *Union Investment Co. v. Wells*(2) followed.

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Appeal allowed with costs.

Wallace Nesbitt K.C. for the appellant.

S. Beaudin K.C. and *Belcourt K.C.* for the respondents.

(1) 6 R. 67.

(2) 39 Can. S.C.R. 625.