

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Petition of William Ewing and another (trading as "William Ewing & Company") for special leave to appeal to His Majesty in Council in the matter of The Dominion Bank v. William Ewing and another, from the Supreme Court of Canada; delivered the 26th July 1904.*

Present :

LORD DAVEY.

LORD ROBERTSON.

SIR ARTHUR WILSON.

[*Delivered by Lord Davey.*]

This is a Petition for special leave to appeal from the Supreme Court of Canada. The case was tried, in the first instance, by Mr. Justice Meredith (without a jury), when the learned Judge held that the note in question was forged, and that the Petitioners were estopped from denying the signature by their not having informed the Bank in due time. There was an Appeal from that decision to the Court of Appeal for Ontario, and that Court dismissed the Petitioners' Appeal. The Petitioners then appealed to the Supreme Court of Canada, and that Court, consisting of five Judges, by a majority of three to two, dismissed the Petitioners' further Appeal. Their Lordships would not be disposed, in these circumstances, to advise His Majesty to exercise his prerogative in favour of the Petitioners, unless they were satisfied that there were strong grounds for believing that a very important question of the law was involved, and the Petitioners had made out a *prima facie* case

which would warrant their Lordships in advising His Majesty to give special leave to appeal. Their Lordships are of opinion that the Petitioners have failed to make out any such case.

The case is a peculiar one. A man named Wallace forged the name of the Petitioners' firm to a promissory note, dated the 14th August 1900, and handed that promissory note on the 15th August to the Dominion Bank, who were the Plaintiffs, and are the Respondents on the present Petition. The Dominion Bank, following a very wise and proper practice which has grown up, gave notice, dated the 15th August, to Messrs. Ewing (who got the notice the next day) that they had received the note, which would fall due on the 17th December 1900. In the meantime they had paid out part of the proceeds to Wallace, the forger of the note, at various times, and on the 17th August 1900 it is said that all but a trivial amount had been drawn out. Messrs. Ewing, wishing apparently to screen Wallace, did not give the Bank any information that the note was forged, and they must have known that their withholding such information from the Bank would entitle the Bank to believe that the note was a genuine note of Messrs. Ewing themselves. Whether the circumstances were such as would raise either an estoppel against the Petitioners, or would amount to what Lord Blackburn in *M'Kenzie v. The British Linen Company* (L.R. 6 A.C. 82, at p. 101), calls a "ratification for a time" by the supposed makers of the note of their signature, is, in the opinion of their Lordships, absolutely a question of fact. They cannot see that any important question of law is really at stake. At any rate, their Lordships cannot see that there was not evidence upon which the Courts might fairly find as they did, and that being so, their Lordships are not

prepared to advise His Majesty to exercise his prerogative by giving special leave to appeal to the Petitioners.

Their Lordships will therefore humbly advise His Majesty to dismiss the Petition. The Petitioners will pay the costs of it.

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