

inquiring for the original. The payees then negotiated the renewal note and the defendant company afterwards paid it.

The trial judge was satisfied upon the evidence that the original note had been presented for payment before action, but he nonsuited the plaintiffs on the ground that they, being shareholders in the payee company, were personally bound by the wrongful action of that company in taking the renewal note.

*Held*, per PERDUE and CAMERON, J.J.A.:—1. That the nonsuit was wrong, as there was nothing to shew that the plaintiffs were not holders in due course.

2. That the action of the defendants in giving the renewal note and subsequently paying it amounted to an acknowledgment that the original note was made with their authority, and that they were liable on it, and was also a waiver of presentment of it.

Per CAMERON, J.A.:—1. That, under s. 183 of the Bills of Exchange Act, presentment of the note for payment before action was not necessary, following *Merchants Bank v. Henderson*, 28 O.R. 360, and *Freeman v. Canadian Guardian Co.*, 17 O.L.R. 296, and dissenting from *Warner v. Symon-Kaye*, 27 N.S.R. 340, and *Jones v. England*, 5 W.L.R. 83.

2. That the defendants were liable on the note although it was not duly made under their by-laws as innocent holders of negotiable securities are not bound to inquire whether certain preliminaries which ought to have been gone through have actually been gone through.

*Imperial Bank v. Farmers' Trading Co.*, 13 M.R. 42, and *Re Land Credit Co.*, L.R. 4 Ch. 469, followed.

Per RICHARDS, J.A.:—That it was necessary to prove presentment before action, and this had not been done.

Per PERDUE, J.A.:—That there was sufficient evidence of presentment before action.

Appeal allowed and verdict entered for plaintiffs with costs.

*C. S. Tupper*, for plaintiffs. *Symington*, for defendants.

Full Court.]

REX v. HOWELL.

[March 7.

*Criminal Code*, s. 778—Summary trial of indictable offence—

Information to be given prisoner by magistrate when offering election as to mode of trial—New trial.

A police magistrate proceeding, under s. 778 of the Criminal Code, to offer a prisoner charged with an offence, for which he cannot be tried summarily without his consent, his choice as to