

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, JJ.A.), was delivered by

MOSS, C.J.O.—It was scarcely, if at all, contended that it was not proved that Irvine's indorsement was procured by fraud.

On this branch of the case the evidence is all one way. But plaintiffs' counsel contended that neither Evans nor plaintiffs were affected with notice, and that they were holders in due course. It would be sufficient for plaintiffs if either they or Evans could be found to be holders in due course for value in good faith. Here, however, the burden of shewing this to be the case had been cast on plaintiffs by the proof of fraud in obtaining Irvine's indorsement: Bills of Exchange Act, 1890, sec. 30 (2); . . . : *Tatam v. Haslar*, 23 Q. B. D. at p. 349 . . . .

As regards the position of Evans, not only did plaintiffs fail to discharge the onus, but sufficient evidence was adduced to support the finding that he was not the holder in due course, even if the onus had rested on Irvine.

The real question was as to the position of plaintiffs, and whether they had succeeded in establishing that they acquired the notes in good faith and for value without notice of the fraud.

The evidence bearing on this branch of the case is strangely conflicting, and it seems impossible to reconcile the statements of the principal witnesses. Some circumstances appear to support plaintiffs' witnesses, while others, equally if not more cogent, seem to support the witnesses for the defence.

It is agreed that the first intimation of the defect in Evans's title which plaintiffs received was through their manager, Simpson, on the night of 2nd October, 1902. Plaintiffs contend that before that there had been a completed transaction of discount of the notes, and that the property in them had become absolutely vested in plaintiffs.

Defendant Irvine contends, on the other hand, that the notes had not then been discounted, but were held by plaintiffs subject to the result of inquiries as to Irvine's financial ability and standing, and to the initialling by Grimshaw, the maker, of certain alterations apparent on the face of the notes.

According to the testimony of Simpson, the manager, and of Evans, the notes were discounted on 1st October. In support of their statements it is shewn that on that day the discount clerk, whose duty it was to enter them on the discount sheet, the proceeds sheet, and the discount diary, did make