

subject to the further equity that it was obtained by fraud, inasmuch as he did not become the holder until nearly three years after dishonour. Although W. H. Davis did not endorse the original note, he became subject, under sec. 138 of the Bills of Exchange Act, R.S.C. 1906 ch. 119, to all the warranties of a transferrer by delivery, viz.: that the note was what it purported to be; that he had a right to transfer it; and that at the time of the transfer he was not aware of any fact which rendered it valueless. It was not shewn that he had a right to transfer it—the contrary appeared. In view of what was proved, the onus was upon the plaintiff to shew that Davis had a right to transfer the note, and he gave no evidence to that effect.

The appeal should be allowed and the action dismissed with costs.

As the defendant was thus released from the payment of the renewal note, she was not entitled to the original note, which had been deposited in Court. It should not be given out except upon the order of a Judge and to the person entitled to possession of it; and the defendant was not to be entitled to set up this judgment as a defence in any action or proceeding against her by a legal holder of the original note.

MEREDITH, C.J.O., and HODGINS, J.A., concurred.

MAGEE and FERGUSON, JJ.A., dissented, each stating reasons in writing.

*Appeal allowed.*

FIRST DIVISIONAL COURT.

JUNE 12TH, 1917.

JACKSON v. CUMMING.

*Limitation of Actions—Title by Possession—Uncultivated Land—Boundary—Acts of Possession.*

Appeal by the defendant from the judgment of the County Court of the County of Peel in favour of the plaintiff for possession of a strip of land and an injunction and \$10 damages.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

H. S. White, for the appellant.

Harcourt Ferguson, for the plaintiff, respondent.