Mulock, C.J.Ex.D., Teetzel and Middleton, JJ.] [May 18.

NORTHERN CROWN BANK *v.* INTERNATIONAL ELECTRIC CO. LIMITED.

Promissory note payable on demand—Endorsed to plaintiffs on date when it becomes overdue—Bills of Exchange Act, sec. 182.

This was an action upon a promissory note bearing date the 28th of June, 1906, made by the defendant company payable to the order of the Electric Advertising Co., for the sum of $3,500 with interest at 5 per cent. per annum, "before and after due and until paid," and endorsed to the plaintiffs on the day of its date. The defence was that the note was without consideration, that being payable on demand it was always overdue, and therefore came into the plaintiffs' hands as overdue, and as such subject to the equities existing between the original parties.

MULOCK, C.J.:—The neat point to be determined is whether the note was overdue when the plaintiffs became holders for value. The case was tried before Meredith, C.J.C.P., who held that the note was not overdue when on the day of its date it passed into the plaintiffs' hands. I agree with the views expressed by the learned Chief Justice in his judgment. It seems to me that the language of s. 182 of the Bills of Exchange Act negatives the appellants' contention that a promissory note payable on demand becomes overdue at the instant of its coming into existence. In substance the section declares that mere delay in presentment for payment shall not cause a note payable on demand to be deemed overdue, thus implying that delay may give a demand note the character of an overdue note which it had not previously possessed. If it were always overdue such delay could not have the operation contemplated by the section. I think it is fair to interpret the section as declaring to the effect that a note payable on demand shall not, because of that circumstance, be deemed to be overdue, but that delay in its presentment may give it the character of an overdue note.

Hellmuth, K.C., and *J. R. Meredith,* for defendants. *Arnoldi,* K.C., for plaintiffs.