

days after date, to the order of George D. Binder, for \$355 "at our office, rear Richmond street," made by the Dominion Chicle Co., Ltd., and endorsed by the defendant Binder and H. E. Short.

When due the note was not presented for payment, nor was notice of the dishonour given, and in consequence the trial Judge dismissed the action; hence this appeal.

The plaintiff alleges waiver of presentment and notice of dishonour, and this is the only question with which we have to deal.

The determining facts, which are not in dispute, are as follows:

On the 29th of March, 1913, the company made an assignment of its assets for the benefit of its creditors to the Canada Trust Company, which latter company thereupon took possession of the company's place of business and assets, and in the course of a month or thereabouts sold the same, possession of the premises also passing to the purchaser.

So far as appears from the evidence this sale may not have taken place until after the maturity of the note and it does not appear whether or not in the meantime the premises were occupied, or whether on the day of the maturity of the note they were locked up. The defendant Binder was a creditor of the company and also its President. In the latter capacity and by virtue of his position as creditor he executed the assignment and subsequently was appointed one of the inspectors.

As endorser he claims to have been discharged because of the plaintiff's failure to present the note for payment or give notice of dishonour. The plaintiff, however, contends that the conduct and relations of the defendant to the debtor company constituted a waiver of the plaintiff's duty to present the note for payment or give notice of dishonour.

It was argued for the plaintiff that all the assets of the company having passed to the assignee the note if presented would certainly have been dishonoured and that therefore presentment would have been a mere idle form. I do not think the assignment warrants that inference. Solvent companies may assign for the benefit of creditors and an assignee may find himself in a position to meet the assignor's liabilities as they fall due, but even if the holder of a note