

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

W. S. Herrington, K.C., for the appellant.

W. N. Tilley, K.C., for the plaintiff, respondent.

MACLAREN, J.A., in a written judgment, said that the note sued on was a renewal of one for the same amount, dated the 6th May, 1912, payable to the order of Hannah E. Davis, one month after date, which was endorsed by the payee and placed for collection in a bank at Picton, where it was made payable. Hannah E. Davis died on the day the note became due. W. H. Davis was her husband. He was not examined as a witness. There was no evidence as to when or how he obtained possession of the first note; but he had it in his possession on the 26th June, 1912, when he delivered it to the defendant, on getting from her the renewal note now sued upon. The evidence of the manager of the bank at Picton was, "that the first \$300 note was deposited with him for collection only, and that, if he had collected it, he would have placed the proceeds to the credit of Mrs. Hannah E. Davis, unless otherwise instructed."

The only proper inference from this evidence, in the circumstances, was, that the bank held the note up to the date of its maturity for Hannah E. Davis, and after her death for her estate, in the absence of further instructions from her. There was no evidence as to when or how W. H. Davis obtained possession of the note; but, as he obtained it only after its maturity and dishonour, he took it subject to the same trust, and consequently had only a defective title.

His obtaining from the defendant a new note on the 26th June would not improve his title or strengthen his position. The same defence may be set up to a renewal as could have been urged against the first note: *Byles on Bills*, 17th ed., p. 164; *Daniel on Negotiable Instruments*, 6th ed., para. 205.

The giving up of the original note did not form a valid consideration for the renewal, as it did not release the defendant from her liability to the estate of Hannah E. Davis. It did not appear that Hannah E. Davis left a will, but she left a son, still under age, and letters of administration of her estate had not been obtained. The plaintiff acquired the note only in May, 1915—nearly three years after its maturity and dishonour, so that he stood in no better position than W. H. Davis, who, so far as appeared, never had any right or title either to the original note or the renewal.

The note now sued upon was, in the hands of the plaintiff,