to;" but it appears that on the morning of the 24th November Fox was again clear of direct liability, although there were outstanding notes under discount.

Apparently during these periods in which Fox was free of direct indebtedness to the plaintiffs, there was always what the manager called an indirect liability, *i.e.*, there were outstanding drafts made by Fox, upon which he would be liable in case of dishonour at the hands of the drawees.

After the 24th November, 1908, Fox again became indebted to the bank, and this indebtedness increased until it amounted to $1,046.90 at the time of the issue of the writ, made up of an overdraft of $196.90 and two notes of $400 and $450 respectively, which were charged up to the account. Both these notes, or notes of which they were renewals, were outstanding on the 24th November, 1908.

The note sued on remained in the hands of the plaintiffs from its maturity on the 4th October, 1907, till the commencement of this action on the 2nd March, 1909.

Fox had, before the last-mentioned date, asked the plaintiffs to use pressure to obtain payment, but nothing had been done. . . .

Notwithstanding Fox's evidence, the impression made on me is, that the note was indorsed to the bank merely for collection and not as collateral. . . .

Judging not merely by the entries in the books, but also by all the dealings between the parties, the note in question seems to have been treated as a note which remained the property of the customer: see Grant on Banking, 6th ed., pp. 209, 215; Hart, 2nd ed., pp. 478, 479; Dawson v. Isle, [1906] 1 Ch. 633. . . .

[Reference to sec. 54 of the Bills of Exchange Act, sub-secs. 1 and 2.]

Under the first sub-section the plaintiffs would be entitled to recover although they had given no value, if Fox had given value; but I do not think the sub-section helps the plaintiffs in this case if the consideration given by Fox had failed before the plaintiffs became entitled to hold the note in their own right. When the alleged failure of consideration took place, the plaintiffs were mere indorsees for collection and had given no value, unless sub-sec. 2 can be invoked. If the plaintiffs had held the note as collateral security, they would have had a lien arising from contract, within the sub-section, at any period of the transactions in question, as there was always an indirect liability in existence: Canadian Bank of Commerce v. Woodward, 8 A.R. 347; cf. sec. 53. . . .