

THE
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SECOND APPELLATE DIVISION. JUNE 15TH, 1914.

HEUGHAN v. SHORT & BINDER.

6 O. W. N. 545.

Bills of Exchange and Promissory Notes—Presentment to Hold Indorser—Waiver—Assignment for Benefit of Creditors—Accommodation Note.

SUP. CT. ONT. (2nd App. Div.) *held*, that a holder must present a note for payment, even if he has reason to believe that it will be dishonoured.

Esdaille v. Sorrerby, 11 East 117; *Count v. Thompson*, 7 C. B. 400; *Tindale v. Brown*, 1 T. R. 167: followed.

Held, that a mere assignment of debtor's estate does not relieve from duty of presentment to hold prior endorser; and the fact that assignment has been caused by a person who, being endorser, is creditor and also president of debtor company, is no evidence of implied waiver.

Held, that the general principle being that "Acts done before maturity in order to constitute waiver must have been such acts as were calculated to mislead the holder and to induce him to forego taking the usual steps to charge the endorser," no waiver was established on the evidence.

Hill v. Heap, Dowling and Ry. 57, followed.

Held, that under sec. 85 of Bills of Exchange Act, presentment is necessary unless dispensed with under sec. 92, that onus of proving waiver is on plaintiff, and that evidence shewed that note was not an accommodation note.

Appeal from a judgment of His Honour Judge MacBeth, of Middlesex County Court, dismissing an action on a promissory note.

The appeal was heard by HON. SIR WM. MULOCK, C.J. Ex., HON. MR. JUSTICE MAGEE, J.A., HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

R. H. Bartlett and T. W. Scandrett, for appellants.

R. G. Fisher, for defendant Bender, respondent.

HON. SIR WM. MULOCK, C.J.Ex.:—The action was brought by the plaintiff, a holder in due course of a promissory note, dated at London, March 25th, 1913, payable 30