

by A., if it be refused, maintain an action against both A. and B. for specific performance and for an order that B. convey to him on payment of the amount due under his agreement with A.

*Smith v. Hughes*, 5 O.L.R., at p. 245; *Dyer v. Mitney*, *Barnardiston's*, (Ch.), 160, and *Fenwick v. Bulman*, L.R. 9 Eq. 165, followed. Dictum of *Perdue, J.A.*, in *Hart v. Wishard Langan Co.*, 18 M.R. at p. 387, not followed.

*J. K. Sparling*, for plaintiff *Blake*, for defendants.

Robson, J.]

[Dec. 12, 1911.]

CRANE & ORDWAY CO. v. LAVOIE AND FOURNIER.

*Bills and notes—Promissory notes signed in name of a proposed company by defendants as president and manager—Liability of as makers of the notes or for breach of warranty of existence and capacity of company—Persons signing as agents for others without authority—Bills of Exchange Act, R.S.C., 1906, c. 119, s. 52—Implied warranty of the existence of the principal—Consideration—Forbearance to sue—Presentment for payment—Measure of damages.*

The defendant Fournier and one Laplante, a firm of plumbers, being indebted to the plaintiffs in the sum of about \$1,500, it was proposed that the plaintiffs should accept the promissory notes of a company about to be formed by Fournier, the defendant Lavoie and others to be called "The Fournier Company" in discharge of the account against Fournier and Laplante.

The plaintiffs agreed to the proposal and shortly afterwards received the notes sued on which were signed "The Fournier Co., Ltd., F. X. Lavoie, President, D. Fournier, Manager." The proposed company was not incorporated until about three weeks afterwards, but the plaintiffs, at the time they received the notes, did not know that the incorporation had not yet taken place. If there was not an actual release of Laplante and Fournier's original debt, there was at least a request for forbearance in consideration of the notes being given and forbearance in fact was granted.

*Held*, 1. These facts shewed a sufficient consideration for the notes: *Crears v. Hunter*, 19 Q.B.D. 341, followed.

2. The defendants were liable for a breach of the implied