

he had paid \$600 on it and would pay the balance. The defendant says that he did nothing then as there was nothing he could do. This falls far short of a ratification, even if a forgery such as this could be ratified.

Further, it was claimed that the defendant was liable on the ground of estoppel, for not notifying the plaintiffs that the note was a forgery, when he received their letter of the 3rd November, and the notice of protest about the 14th November, and *Ewing v. Dominion Bank*, 35 S.C.R. 133, [1904] A.C. 806, is cited in support. This case is not at all in point. The defendant would receive the plaintiffs' first letter about the 6th November, and if he had replied by return mail the plaintiffs would not have received it before Thompson made the assignment to the plaintiff Jarvis on the 9th November, and the notice of protest came only a week after the assignment. The plaintiffs according to their evidence and the entries in the books paid Thompson nothing after May 18th and closed his account on June 30th, months before the defendant received any notice or became aware of the existence of the note; and there is no evidence or suggestion that they could have suffered any loss between the time that the defendant became aware of the existence of the note, and the time of their bringing the action and becoming aware of the defence of forgery, so that there is no foundation for any estoppel. In the *Ewing* case the Dominion Bank paid out \$1,355 of the proceeds of the forged note, which it would not have done if Ewing had advised of its being a forgery on getting the notice from the bank.

The plaintiffs further urge that they should succeed as having acquired the note from the Union Bank, a holder, they say, in due course. As already pointed out it is only a note that has been duly delivered to be converted into a note that is, by the proviso of section 32, validated as a note; but there is a further weakness in the plaintiffs' contention, namely, the want of evidence to prove the fulfilment of any of the necessary conditions. Section 58 provides that when it is admitted or proved that the issue of a bill is affected with fraud or illegality, the burden of proof that he is a holder in due course shall be upon the holder, unless and until he proves that, subsequent to the fraud or illegality, value in good faith had been given by some other holder in due course. Here admittedly there was fraud and illegality on the part of Thompson and the note was a forgery. It became necessary therefore to prove that the Union Bank took the note when it was regular and complete on its face, in good faith and for value without notice of any defect in the