

FIRST DIVISIONAL COURT.

DECEMBER 6TH, 1918.

\*McGLYNN v. HASTIE.

*Bills Notes and Cheques—Effect of Acceptance by Seller from Buyer of Cheque of Third Person in Exchange for Goods—Barter of Cheque with all Risks—Dishonour of Cheque—Action against Buyer for Price of Goods.*

Appeal by the defendant from the judgment of the County Court of the County of Huron in favour of the plaintiff in an action for \$200.10, the price of 6 hogs sold and delivered to the defendant and the cost of protest of the dishonoured cheque given in payment for the hogs.

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

Charles Garrow, for the appellant.

William Proudfoot, K.C., for the plaintiff, respondent.

MACLAREN, J.A., read a judgment in which he said that the defendant alleged that he had bought the hogs as the agent of one Munro, and had so informed the plaintiff, and that the plaintiff accepted Munro's cheque in payment.

The trial Judge believed the testimony of the plaintiff and found that Munro's name was not mentioned on the evening of the 17th October, 1917, when the defendant called at the plaintiff's house and asked him if he had any hogs for sale. That finding should be accepted.

The trial Judge further held that the sale was made on the evening of the 17th October; but that was clearly wrong. The sale was not made until the morning of the 18th.

When the defendant, on the 18th, gave the plaintiff Munro's cheque in payment for the hogs, the plaintiff noticed that the cheque was signed by Munro, and not by the defendant; and the plaintiff went away without saying anything about it.

Where a bill, note, or cheque is taken for or on account of a pre-existing debt, the presumption is that it is only conditional payment, and, if it is dishonoured, the debt revives; but if it is given in exchange for goods or other securities sold at the time, the transaction amounts to a barter of the bill with all its risks: *Fyde v. Clark* (1796), 1 Esp. 447, 448; *Camidge v. Allenby* (1827), 6 B. & C. 373, 381; *Byles on Bills*, 17th ed., p. 182; *Roscoe's Nisi Prius Evidence*, 18th ed., p. 699.

The appeal should be allowed and the action dismissed.