

The indebtedness on a promissory note made by the appellant to another of the respondent bank's customers, of which it became in the ordinary course of business the holder, came within the terms of these agreements.

The note made by the appellant to Cook was payable to Cook's order, but was not endorsed by him; it was given to the bank to be held as security for an indebtedness. The manager of the Sarnia branch had, however, a power of attorney from Cook to "endorse promissory notes;" and that, with the possession of the notes, was sufficient. The true test was not whether, at the time the demand for the securities was made, the bank could have maintained an action on the note. The bank had then the possession of the note, though unendorsed, and was in a position at any moment to complete its legal title to the note and to maintain an action upon it by the exercise of the power of attorney; and the appellant was then indebted to the bank within the meaning of the agreements.

The effect of sec. 61 of the Bills of Exchange Act, R.S.C. 1906 ch. 119, was, that the transferee, before endorsement, was in the position of equitable assignee of a chose in action, and might sue in the name of the transferor, and also enforce by action his right to have the instrument endorsed to him. See Halsbury's Laws of England, vol. 2, p. 503, para. 853, and cases cited.

MACLAREN, HODGINS, and FERGUSON, JJ.A., concurred.

MAGEE, J.A., agreed in the result.

*Appeal dismissed with costs.*

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FIRST DIVISIONAL COURT.

APRIL 3RD, 1917.

FRANCIS v. ALLAN.

*Contract—Claim against Estate of Deceased Person—Promise of Executor to Pay Sum in Settlement—Want of Consideration for Promise—Enforcement of Moral Obligation—Claim upon Promissory Notes—Interest—Costs—Appeal.*

Appeal by the defendant Norman Allan and cross-appeal by the plaintiff from the judgment of KELLY, J., 11 O.W.N. 259.