

be considered to have waived his right to object to the want of notice, there was nothing in what he did which precluded him from setting up any failure to present the notes for payment and to protest them for non-payment: *Woods v. Dean* (1862), 3 B. & S. 101; *Britton v. Milsom* (1892), 19 A.R. 96; and other cases.

The promise was, however, presumptive evidence of the presentment, notice, and protest. The promise being established, the onus of proving laches on the part of the holder, and that the endorser was ignorant of it when he made the promise, is cast upon the endorser: *Taylor v. Jones* (1809), 2 Camp. 105; *Britton v. Milsom*, *supra*; *Falconbridge on Banking and Bills of Exchange*, 2nd ed., p. 671. The defendant had proved ignorance. Whether he had proved laches remained to be considered.

The notes being "foreign bills" (Bills of Exchange Act, R.S.C. 1906 ch. 119, sec. 25), protest upon non-payment was necessary to hold the endorser (sec. 112). This is the law of Pennsylvania, as well as of Canada: *Laws of Pennsylvania*, 1901, No. 162, sec. 152. It was admitted that the note which fell due in 1907 was not protested. There was, therefore, no liability in respect of it.

The note which fell due in 1906 was protested, but was it duly presented for payment? The question for determination was whether the defendant had proved that there was no due presentment for payment. Such presentment as there was, was at the place which had been, but no longer was, the office of the payees. When the notary found that the payees no longer had an office at that place, and that the maker was not at that place, he made no further efforts to find the maker, but forthwith protested the note. The question was whether—*Hurley & Co.* no longer having an office in Philadelphia—the holders were bound to do anything more than they did in the way of presenting the note for payment.

That question was to be decided according to the law of Pennsylvania: Bills of Exchange Act, sec. 162. By agreement of counsel, in lieu of proof of the foreign law, it was left to the learned Judge to find what the law was by reference to the Negotiable Instruments Law, *Pennsylvania Laws of 1901*, No. 162, and relevant authorities.

The learned Judge's conclusion, upon the Pennsylvania Law and a large number of authorities collected by him, was that presentment at the office of *Hurley & Co.* having been impossible and there being nothing in the statute which made any place other than that office a "proper place" for presentment, present-