

the 5th November, 1904, payable to the order of Hurley & Co., "at their office, City of Philadelphia, State of Pennsylvania." One of the notes was payable two, another three, and the third four years after date. As to the last, liability was admitted. As to the others, the defence was an alleged failure on the part of the holders to present the notes to the maker for payment and to give notice of dishonour to the endorser and to protest the notes.

The action was tried without a jury at a Toronto sittings.

H. W. A. Foster and W. J. Beaton, for the plaintiffs.

G. W. Mason, for the defendant.

ROSE, J., in a written judgment, said that two contentions made by the plaintiffs, viz., that the defendant was really in the position of a maker and was primarily liable without presentment, protest, etc., and that the defendant was liable upon a release executed by him, failed upon the evidence.

There remained nothing to consider but the defence of want of due presentment, notice, and protest.

When the note payable three years after date fell due, the plaintiffs took no steps with regard to it; but on the 16th November, 1907, they wrote to the defendant, telling him that the three notes had been assigned to them and that the first two were overdue and unpaid; and they asked for payment by the 1st December. At the end of December, 1907, the defendant wrote to the plaintiffs asking that the matter be allowed to stand for a short time and promising to make a proposition of settlement; and from that time until the commencement of this action in January, 1918, there were repeated promises to pay, some payments on account, and many requests for extension of the time for payment of the balance.

There were originally four notes. The first was payable on the 5th November, 1905. After it fell due, Hurley & Co., who were the holders, drew on the defendant for the amount, with interest and protest charges, and he paid the draft. He swore that he did not receive any notice of dishonour or any notice of any kind from a notary in regard to the notes at two and three years—those here in question—but that that fact was not present to his mind when he made his promise to pay and payments on account; that he had had notice with reference to the note due in 1905; that he knew that it had been protested; that he had paid it; and that he assumed that the holders had done what was requisite with reference to the others. There seemed to be no reason to doubt his statement; and, even if he should