

business, in a way, in Stratford, and represented by Messrs. Mobray and Lett, and it was this apparent organisation for which the makers of these notes were called upon to vouch by the statute in question. Business necessity abundantly justifies the policy of the Act.

The "capacity to indorse" also is to be presumed. This means, in case of a company, that the company has officers who can indorse—for only through officers or agents can a company exercise this function. This brings the case within *Royal British Bank v. Turquand*, 6 E. & B. 327, and the cases following it, collected in *Palmer*, 8th ed., p. 42.

If this view is not right, and the Oklahoma company is still unorganised, then the company into which the defendants sought admission and to which the bank lent the money was a fictitious or non-existent body, and the notes became payable to bearer, and the defendants are liable: sec. 20 (5).

If the result is, that the company never having been in any way incorporated—the assumption of Mobray and Lett that they represented the Oklahoma company and completed its organisation being unfounded—then the defendants and their associates may have become liable as an unincorporated body carrying on business under the name of the company, and in that event their liability would be greater than that now alleged by the plaintiffs.

There remains the question of the effect of the absence of an Ontario license. I am inclined to think that the warranty of the capacity to indorse precludes the defendants from setting this up. . . .

I am prepared, however, to rest my judgment upon the construction of the statute and the effect of the license issued after the making of the notes and before action.

By sec. 6 of 63 Vict. ch. 24, no extra-provincial company shall carry on business within Ontario without a license. By sec. 14 a penalty is imposed, and, in addition, so long as it remains unlicensed, it shall not be capable of maintaining any action upon any contract made in contravention of sec. 6. Upon the granting of a license, any such action may be maintained as though a license had been duly obtained. I think the statute prescribes the penalty attaching to the failure to obtain a license, and that the right to sue given when the license is obtained is a right to sue effectually as though there had been no offence against the statute in the first place. . . . The statute is coercive, and to compel the issue of the license the remedy of the company is