exemption from liability on his part. Then can we hold it to be a defence for the surety in equity more than at law? We think not. It may be truly said that the plaintiffs were negligent in not seeing that the oath was duly taken, and on grounds of public policy they should not be encouraged to think themselves equally secure as if they had done their own duty in that respect, but at the most that was laches on their parts, and in a matter collateral, not in any thing to which the bond or condition refers.

He was collector, though he was not sworn. His receipt for the money, we take it, would bind the municipality so that they could not enforce payment a second time from the parties assessed, who had paid their taxes to this collector; and we should be supported by no authority, we think, in holding that the fact of the collector not being sworn operates in equity as a discharge of the surety. By the 127th section, as amended by the statute of 1850, a fine of £10 is imposed upon the collector if he omits to take the oath, which would hardly be an adequate punishment if the legislature intended that all he had done while he had not taken the oath should be held to be illegal to the extent that he might keep as against the municipality whatever money he had collected.

There are many instances where the surety has claimed in vain to be exempt in consequences of laches in the party taking the security, where the claim for discharge was far stronger, as, for instance in *Sheperd* v. *Beecher*, (2 P. Wms. 288). There was no fraudulent concealment here of a fact which the surety might desire to know. He could easily have learned whether the collector had taken the oath of office. When the act says, as it does, that before entering on the duties of his office the collector shall take the oath prescribed, or in default of his doing so shall pay £10, it does not follow, in our opinion, that his failing to observe that direction renders whatever he does illegal.

As to the sixth plea, the statute 18 Vic., ch. 21. is an answer to any objection on the ground of extension of time, for it authorised the extension, and expressly provides that any such extension should not "invalidate or otherwise affect the liability of the collector or his sureties in any manner whatever."

The plaintiffs we think should have judgment in their favour on all the demurrers.

Judgments for plaintiffs on demurrer.

McIver et al. v. Jacob Dennison.

Note payable to maker's wife—Endorsement by her.

Declaration, on a note made by defendant, payable to D. or order, and by him endorsed to plaintiffs. *Plea*, that D., when the note was made, was, and still is defendant's wife. *Replication*, that defendant made the note with the intent that D. should endorse away the same, and that she endorsed it to the plaintiffs by his authority.

Held, on demurrer to the replication, that the action was maintainable, and the plaintiffs entitled to judgment.

Action on a promissory note for $472 75, made by defendant, payable to Catherine Dennisen or order, and by her endorsed to plaintiffs.

Plea.—That the said Catherine Dennison, to whom the said supposed note in the declaration mentioned was made payable, was at the said time of the making of the said supposed promissory note, and at the said time of the said endorsement thereof, and still is the wife of the said defendant; and that the said defendant and the said Catherine Dennison, at the said several times, when, &c., were, and still are living together as husband and wife within Upper Canada.

Replication.—That the said defendant made the said promissory note in the said declaration mentioned, payable to the said Catherine Dennison, or order, as set forth in the declaration for the express purpose, and with the intent that she should endorse away the same, and that she endorsed the said note to the plaintiffs with the privity, approbation, and consent of the said defendant, and by his authority.

Demurrer on the grounds.—1. That inasmuch as the matter disclosed in the plea shews the instrument declared on to be void and not a negotiable instrument, for want of a legal and sufficient payee, and the replication admits the truth of the plea, the intent and purpose alleged in the replication are insufficient to render the instrument a valuable and negotiable instrument. 2. That the instrument being void from the beginning, the consent or authority of the defendant, as alleged in the replication, could not make the endorsement valid, or give a right of action to the plaintiffs upon such instrument.

The plaintiff joined in demurrer, and took the following exceptions to the plea:—that the defendant having made the said note, as in the said declaration alleged, payable to the said Catherine Dennison or order, thereby gave her authority to endorse the said note, and she having in pursuance of such authority endorsed the same to the plaintiffs, the defendant is estopped from alleging her coverture with him in bar of the action, or from denying her right to endorse the said note. That under the circumstances set forth in the declaration and in the said plea, the plaintiffs being the holders of the said note without notice, the said plea affords no answer whatever to the declaration, or to the right of the plaintiffs to recover on the said note That the defendant having made his said note payable to the said Catherine Dennison or order, as a feme sole, is now estopped from alleging his coverture with her in bar of the plaintiff's action.

C. S. Patterson for the demurrer. *Richards*, Q. C., contra.

The following authorities were cited—*Smith* v. *Marsack*, 6 C. B. 486; *Easton* v. *Pratchett*, 1 Cr. M. & R. 798; *Hooper* v. *Williams*, 2 Ex. 13; *Goy* v. *Lander*, 6 C. B. 836; *Prestwick* v. *Marshall*, 7 Bing. 565; *Cotes* v. *Davis*, 1 Camp. 485; *Prince* v. *Brunatte*, 1 Bing. N. C. 435; Chitty on Bills, 16.

Robinson, C. J.—I think the plaintiffs are entitled to judgment on this demurrer, on the authority of the case of *Smith* v. *Marsack* (6 C. B. 500) and of *Drayton* v. *Dale*, (2 B. & C. 299,) which latter case is relied on as an authority in *Sanderson* v. *Collman*, (4 M. & Gr. 218.) I refer also to Story on Promissory Notes, secs. 80—88; *Halifax* v. *Lyle*, (3 Ex. 453); *Braithwaite* v. *Gardiner*, (8 Q. B. 474); *Pitt* v. *Chappelow*, (8 M. & W. 616); *Prestwick* v. *Marshall*, (4 C. & P. 594, S. C. 7 Bing. 567); *Prince* v. *Brunatte*, 1 (Bing. N. C. 435,) and Byles on Bills, p. 155.

McLean, J.—It appears to me that this action is sustainable, and that the defendant cannot set up as a defence that the note declared on was made by him payable to his wife or order, and therefore void.

When he made the note so payable he constituted his wife so far his agent as to give her power, by putting her name on it, to give it currency as a negotiable note. She could not enforce the payment, and the note would have no force so long as it remained in her hands, but by endorsing it and handing it over to the plaintiffs the defendant became bound to pay the amount according to its tenor and effect. If the note had been drawn by the defendant payable to his own order, it would be of no value until endorsed by him, but his endorsement would immediately make it a note payable to bearer; and I cannot see why a note payable to the defendant's wife or order, and endorsed by her in blank, should not equally become binding as a note payable to bearer. The defendant could give his wife authority to make a note in his name, and if she made such a note, and the authority could be shewn, the defendant would of course be liable as the maker. But if he authorised his wife to endorse an instrument by which he promised to pay a certain amount to her order, and the instrument so endorsed is transferred, as alleged in the replication, I think he is estopped from denying his liability on such instrument to the holder of it.

Judgment for plaintiffs on demurrer.

IN PRACTICE COURT.

EASTER TERM, 1860.

Reported by Robert A. Harrison, Esq., *Barrister at-Law.*

In the matter of the Arbitration between the Corporation of the Township of Eldon and David Ferguson and Israel Ferguson.

Corporations, sole or aggregate, if not disabled, may submit disputes relating to Corporate property, to arbitration, and their successors will be bound thereby.

The authority of the Executive Government to appoint a Commission to enquire into the financial affairs of a Municipal Corporation, does not prevent such a Corporation from suing for money due to them.

Quære—Can the Reeve of the Township affix the Seal of the Township to a submission to arbitration as to property of the Township, without being specially authorized by resolution of the Council so to do?