

at the time and paid the rent for May and June at the increased rate. Then, after taking advice, she considered that she might hold the premises as a yearly tenant at the old rate of \$25 a month and refused to pay more.

*Held*, that this position was untenable and that defendant was liable for rent at \$30 a month during her subsequent occupancy.

As another year had expired before the judgment was given it was held unnecessary to decide whether defendant, during the second year, was a tenant from year to year at the increased rent or only a monthly tenant.

*Howell*, K.C., for plaintiffs. *Elliott*, for defendant.

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Full Court.]

GIBSON v. COATES.

[July 14.

*Promissory note—Consideration—Holder in due course—Bills of Exchange Act, 1890, ss. 29, 30—Objections not raised at trial.*

Appeal from verdict of County Court judge in favour of defendant in an action to recover the amount of a promissory note for \$250 made by defendant payable "to the order of T. F. Higgins or bearer" and transferred by delivery and before maturity to one Buchanan, by Buchanan to one Dunbar, and by Dunbar to plaintiff.

Defendant had given the note to Higgins in settlement of a claim made upon him by Higgins which was unfounded in law, but the evidence appearing in the notes of the trial judge left it doubtful whether Higgins believed his claim to be good or not.

*Held*, per Richards, J., that, as the trial judge found in favour of the defendant, it should be assumed that he found that Higgins did not believe himself to have a legal claim, and the evidence fairly supported such finding, so that, under s. 30 of the Bills of Exchange Act, 1890, the onus was on the plaintiff to prove that he was a holder in due course within the meaning of s. 29 of that Act, or that either Buchanan or Dunbar had, in good faith and without notice of any defect in the title to the note, given value for it.

As to the acquisition of the note by the plaintiff, the only evidence appearing in the notes was that he gave a team of horses to Dunbar in exchange for the note and another note made by Dunbar for \$85; and as to the transfer of the note from Higgins to Buchanan the only evidence was that of Buchanan who swore that he had bought the note from Higgins,