

implied waiver of such person's rights as endorser. It had no relation to his position as endorser and cannot be regarded as evidence of an intention of waive.

Adopting the plaintiff's contention the only effect of the defendant's action was to transfer the company's estate to the assignee and put it out of the power of the company itself to pay the note at maturity. Nevertheless the assignee, as representing the company, or Short, might have paid it, and the mere strong probability (which for argument's sake may be admitted), that under the circumstance of the assignment brought about by the defendant, the note would not be paid when presented, did not excuse non-presentment.

By sec. 85 of the Bills of Exchange Act, presentment was necessary unless dispensed with as provided under sec. 92.

Waiver is the only ground relied on, and the onus was on the plaintiff to establish it. This she has failed to do, and I therefore think the appeal should be dismissed with costs.

HON. MR. JUSTICE MAGEE and HON. MR. JUSTICE SUTHERLAND, agreed.

HON. MR. JUSTICE LEITCH:—This is an appeal from the County Court of the County of Middlesex. The action was tried on the 23rd day of December, 1913, by His Honour Talbot MacBeth, without a jury. The learned trial Judge reserved judgment and on the 6th day of January, 1914, gave written reasons for his judgment dismissing the plaintiff's action with costs as against the defendant Binder. The plaintiff now appeals.

The action was brought against the defendants, Binder and Short, as endorsers of a promissory note for \$355 dated 25th March, 1913, made by the Dominion Chicle Co., Ltd., payable to Binder, thirty days after date at the company's office. The action went to trial against the defendant Binder alone. The question in this appeal is as to whether or not Binder is released, under the circumstances, from liability by the non-presentment of the note by the plaintiff for payment and by her omission to give notice of dishonour. Short, who is the plaintiff's nephew, induced the plaintiff to advance the money on the note. One cannot but sympathize