ever given. And he admitted that when the cheque was returned unpaid he consulted Hill and said, "We ought to sue the cheque" —he said "we" because both he and Hill were interested in the cheque.

Where the payee of a cheque which has been issued without consideration, and which for that reason is unenforceable against the drawer, endorses it to a creditor who takes the cheque as cash and credits the payee therewith as a payment on account of a debt, the endorsee becomes a holder in due course and is entitled to recover from the drawer: Currie v. Misa (1875), L.R. 10 Ex. 153; McLean v. Clydesdale Banking Co. (1883), 9 App. Cas. 95. But in the present case the plaintiff gave no credit to Hill at all; he took the cheque for collection, intending to credit Hill as soon as it was paid. The existing debt was sufficient consideration if it had been so treated, but there was no evidence of an agreement between the plaintiff and Hill that the former would not claim payment of Hill's indebtedness to him during the currency of the cheque, such as was held in Elkington v. Cooke-Hill (1914), 30 Times L.R. 670, to be a sufficient consideration.

Sawyer v. Thomas (1890), 18 A.R. 129, and Hopkins v. Ware (1869), L.R. 4 Ex. 268, 271, distinguished.

Although the plaintiff was a "holder" by reason of Hill's endorsement of the cheque to him, and therefore entitled to enforce payment and to give a complete discharge, his right to enforce payment stood on no higher ground than that of Hill, because there was no consideration for Hill's endorsement. As a mere holder of the cheque, the plaintiff's right to enforce payment was qualified.

As the plaintiff gave no value for the cheque, it was not necessary to go into the second defence, which was that, the cheque having been already dishonoured before Hill endorsed it to the plaintiff, the latter took it subject to any defect in Hill's title.

The action should be dismissed with costs.

Had the defendant been held liable to the plaintiff, the defendant would have been entitled, as the accommodation drawer of the cheque, to indemnity from Hill. The defendant should, therefore, have judgment against Hill for his costs of the third party proceeding.