

It is true that no defect of title affecting the note "at its maturity" has been proved under the strict reading of sec. 70; but the section proceeds to declare that thenceforward, *i.e.*, after the negotiation, "no person who takes it can acquire or give a better title than that which had the person from whom he took it."

There is nothing in sec. 70 or sec. 74 prohibiting the setting up of the subsequent failure of consideration, and, in the absence of any clear rule derived from the language of the Act, we must apply the common law as declared in *Holmes v. Kidd* and *Ching v. Jeffery*. Compare *Union Insurance Co. v. Wells*, 39 S.C.R. at pp. 629, 632, 640.

In this view of the matter, it becomes necessary, in order to decide whether the plaintiffs may recover, to pass upon the partnership transaction between Fox and Living. Although neither is a party to the action, both were called as witnesses at the trial. Apparently Fox dismissed Living—perhaps for good cause if he had been an employee. But there is no provision in the agreement for terminating the arrangement, and the method which Fox adopted to sever the business connection seems inapplicable to a partnership and involves an entire failure of consideration.

Living, on his own evidence, did receive some moneys, perhaps \$1,000, beyond his expenses; but we are quite in the dark as to the state of the partnership account, except that Living stated that there were thousands of dollars in the business which he had assisted in making. Fox was asked about it in reply, and, on objection being taken, the Chancellor was willing to receive it for what it was worth, but the plaintiffs' counsel preferred to leave it at that."

Thus apparently the plaintiffs were willing to take their chance, without availing themselves of the opportunity given by the Chancellor of shewing that the \$2,000 or some part of it is payable to Fox, notwithstanding the alleged termination of the partnership.

In my opinion, the appeal should be allowed with costs and the action dismissed with costs.

LATCHFORD, J.:—I agree in the result.

BRITTON, J., dissented, agreeing with the Chancellor, for reasons stated in writing.