

Huff did afterwards with the notes. His expectation and intention were that Huff would hold the notes subject to the agreement, and that they would not be payable unless the instalments were paid. This part of the plaintiff's action should be dismissed. There was no fraud nor misrepresentation on the part of the plaintiff which induced the contract. The counterclaim should be dismissed. No order as to the costs of the action or the costs of the counterclaim. D. L. McCarthy, K.C., for the plaintiff. J. Y. Murdoch, for the defendant.

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HUFF v. BURTON—LATCHFORD, J.—JUNE 25.

*Promissory Notes—Collateral Agreement—Notes Payable only upon Event which did not Happen—Transfer by Payee to Plaintiff—Notice to Transferee of Agreement—Transferee Subject to Equities between Original Parties—Action on Note Retained by Transferee—Dismissal—Damages for Fraudulently Transferring other Notes to Persons who Compelled Payment—Counterclaim.*—This action arose out of the agreement of the 28th September, 1915, referred to in *Burton v. Cundle*, ante; and, by consent of counsel, the evidence in that case, so far as applicable, was taken as if given in this. Huff sued upon one of the three promissory notes endorsed to him by Cundle, that for \$250. The others, each for \$1,000, he had previously transferred before maturity to holders who, asserting that they were holders for value, without notice of any equity preventing the negotiability of the notes, had compelled payment by the defendant. The defendant counterclaimed as to these notes. The action and counterclaim were tried without a jury at Barrie. LATCHFORD, J., in a written judgment, said that the plaintiff knew that all the notes endorsed to him by Cundle were not to be payable otherwise than out of instalments of purchase-money, which, to his knowledge, might never be paid. He took the notes subject to all the equities to which Cundle was subject. As no instalment of purchase-money was ever paid to the defendant after the agreement of the 28th September was made, and the sale thereupon became abortive and was cancelled, the plaintiff's action failed and should be dismissed with costs. The plaintiff acted dishonestly and in fraud of the defendant in transferring the two notes each for \$1,000. The defendant counterclaimed, and was entitled to damages for such wrongful acts on the part of the plaintiff. Such damages amounted, in the case of the first note so improperly negotiated, to \$1,064.24, with interest from the 28th February, 1917; and in the case of the other, which the