

Robinson v. Mann, 31 S.C.R. 484, and *McDonough v. Cook*, 19 O.L.R. 267, followed in preference to *Jenkins v. Coomber* (1898), 2 Q.B. 168, and cases following it. Difference between above section and the corresponding section (56) of the Imperial Act pointed out.

2. Although the defendant company had made the note in question in pursuance of an agreement to assume the debt of another to the plaintiff company, yet, as there was a good and valuable consideration given for that assumption, the plaintiffs were holders in due course and the defendant company was liable upon the note.

3. The other defendants, being directors of the defendant company, having indorsed the note and induced the plaintiffs to enter into and perform the agreement in consideration of which the note was given, were estopped from disputing the validity of the transaction or setting up that the defendant company had not power to give this note: Bills of Exchange Act, s. 133.

McDonough v. Cook, supra, at pp. 272, 274, and *Lloyds Bank v. Cooke* (1907), 1 K.B. 794, followed.

Hanneson, for plaintiffs. *Mulock*, K.C., and *Loftus*, for defendants.

Full Court.]

FOSTER v. STIFFLER.

[April 25.]

Vendor, and purchaser—Right of purchaser to recover after conveyance in respect of incumbrances then discovered—Transfer under Real Property Act—Mistake as to amount of incumbrances—Misdirection in particulars of sale—Caveat emptor.

Appeal from judgment of MATHERS, J., noted, vol. 45, p. 755, allowed with costs on the ground that the agreement of the parties had only been partially carried out, could not be said to have been merged in the transfers, thus taking the case out of the principle of the cases there cited and relied on by the judge below.

Order for entry of judgment in the court below declaring the plaintiff entitled to a vendor's lien on the lands conveyed and to be conveyed by him for the balance due under the agreement including the \$950 in dispute.

McLaws, for plaintiff. *Hoskin*, K.C., and *Montague*, for defendant.