

The defendant was a young man without experience and of little business capacity and without independent advice when he was induced by one Bartlett to enter into a very disadvantageous bargain for the sale of his land which he could not carry out. Bartlett then made false representations as to the defendant's liability to him for damages and, assisted by his own solicitor, succeeded in procuring from the defendant the promissory note for \$1,015 sued on in settlement of the supposed damages. He then indorsed over this note to the plaintiffs to be held as collateral security for a note of his own which was then current.

*Held*, that the issue of the note was affected with fraud or illegality within the meaning of s. 58 of the Bills of Exchange Act, that the dealings between Bartlett and the defendant were unfair and should be set aside, and that the plaintiffs, not being holders in due course and having no better title to the note than Bartlett, could not recover in an action against the defendant upon it. *Evans v. Llewellyn*, 1 Cox 333; *Clark v. Malpas*, 4 De G. F. & J. 401; *Baker v. Monk*, 4 De G. J. & S. 388; *Fry v. Lane*, 40 Ch. D. 322; *Slator v. Nolan*, Ir. R. 11 Eq. 367, and *Waters v. Donnelly*, 9 O.R. 391, followed.

*Held*, also, that the defendant was entitled to recover from the plaintiffs the amount which he had paid them under protest to prevent the seizure and sale of his goods under a chattel mortgage which he had been induced to give to Bartlett to secure the note in question, and which Bartlett had assigned to the plaintiffs.

*Curran*, K.C., for plaintiffs. *Kilgour*, for defendant.

Full Court.]

JOHNSON v. HENRY.

[July 5.

*Vendors and purchasers—Return of payments when vendor unable to make title—Payments in shares which afterwards became worthless—Right of vendor to return the shares instead of the amount at which they had been valued in the exchange—Estoppel by recovery of judgment.*

The defendant sold 18 parcels of land to the plaintiff at an average price of \$1,040 each and accepted shares in a company of the par value of \$6,400 in lieu of the first payment to be made under the agreements. Plaintiff paid in cash by way of second instalment \$794.56. Defendant recovered judgment against