ORDE, J. NOVEMBER 10TH, 1920.

BIRD v. YOUNG.

Bills and Notes—Cheque Drawn on Bank—Absence of Consideration —Dishonour—Endorsement to Creditor of Payee—Action by Creditor against Drawer—Creditor Taking Cheque for Collection without Giving Credit or Value—Endorsement after Dishonour —"Holder"—"Holder in Due Course"—Third Party—Costs.

Action by W. A. Bird against W. C. Young to recover the amount of a cheque for $1,000, drawn by the defendant upon a bank in Toronto, payable to H. S. Hill, who was brought in by the defendant as a third party, and endorsed by Hill to the plaintiff.

The action was tried without a jury at a Toronto sittings.

W. R. Smyth, K.C., for the plaintiff and the third party.

J. J. Gray, for the defendant.

ORDE, J., in a written judgment, said that it was admitted that there was no liability of the defendant to Hill which could serve as a consideration for any promissory note or bill of exchange as between them. Hill admitted that the cheque dated the 16th August, 1917, was in reality a gift, in return for certain help which he had given to the defendant. The latter admitted the giving of the cheque, but said that it was understood that it was not to be cashed until he should send word to Hill to use it. On a later day, the defendant, being afraid that Hill might not observe this condition, stopped payment of the cheque at the bank. There was in fact no consideration for the cheque, and payment could not be enforced by Hill against the defendant.

Unless, therefore, the plaintiff was a holder in due course he stood in no better position than Hill.

In August, 1917, Hill was indebted to the plaintiff, according to their evidence, to the extent of $1,090. The plaintiff, who lived in Buffalo, was pressing Hill for payment, and it was this pressure which induced Hill to apply to Young for money. When Hill received the cheque, he went to Toronto to cash it, and found that payment had been stopped. He then endorsed it to the plaintiff, without telling him that the cheque had been dishonoured, and the plaintiff deposited it for collection in his own bank in Buffalo. When it was presented for payment in Toronto, payment was again refused.

The plaintiff now claimed to recover as a holder in due course. In the witness-box he said that he took the cheque from Hill on account "to credit him if it were paid," and no credit was in fact