the transfer was not a transaction between Coombs and the appellant, but between the latter and the Bank. The appellant's money paid off the Bank and the securities were handed over directly by the Bank to the appellant. Neither the law, business usages nor common sense authorize us to characterize such a transaction as a payment of the note by the maker and its re-issue by him. The circumstance that the draft and cheque for the amount paid to the Bank passed through Coombs' hands can make no difference; it is clear that the appellant intended to acquire, and supposed, as he had a right to do, that he was acquiring, the title from the Bank directly to himself. I am therefore of opinion that by force of the explicit statutory provisions I have referred to, the appellant was entitled to recover the amount for which the Bank, as pledgee of the note, could have maintained an action against the respondent.

After discussing the legal principles involved the learned Chief Justice adds:

If therefore the evidence fails to establish, as I think it does, that there was a payment by or on behalf of the maker, and a re-issue of the note, the law clearly entitles the appellant to recover the amount for which the Bank as pledgee was entitled to a lien on it. I do not refer the appellant's title to recover to the general doctrine of subrogation merely, but to those independent rules of the law merchant which I have pointed out, rules founded in commercial convenience, and necessary, not only to protect holders in good faith of negotiable paper, but also to ensure the negotiability of such securities.

Gwynne, J.—I am of opinion that this appeal must be dismissed. The sole question in the case really is whether the plaintiff MacArthur purchased the note sued upon from the assignee of the insolvent estate of Knowles, the payee of the note, or from the Commercial Bank of Manitoba. If from the assignee of Knowles the action cannot be maintained, for there can be no doubt that the note was given to Knowles under such circumstances that he never could have maintained an action upon it against the defendant, and the plaintiff MacArthur became purchaser of it after it had become due. I cannot entertain a doubt that the transaction was one of purchase by the plaintiff MacArthur from the assignee of Knowles of a whole batch of notes, including the one sued upon, as part of the estate of the insolvent Knowles. MacArthur, it is true, knew that the draft which he gave to the assignee of Knowles for all the notes which he purchased would go to the Bank, but that was necessary to enable MacArthur's title as purchaser from the assignee of a portion of the notes which were held by the