1901

*Oct. 31.

ALFRED ROBINSON (PLAINTIFF).....APPELLANT;

AND

GEORGE T. MANN (DEFENDANT).....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Promissory note—Indorser—Bills of Exchange Act, 1890 *s.* 56—*Chattel mortgage—Consideration.*

Under sec. 56 of The Bills of Exchange Act, 1890, a person who indorses a promissory note not indorsed by the payee may be liable as an indorsee to the latter.

The provisions of the Ontario Chattel Mortgage Act required the consideration of a mortgage to be expressed therein is satisfied when the mortgage recites that the indorsement of a note is the consideration and then sets out the note. Only the facts need be stated, not their legal effect.

APPEAL from a decision of the Court of Appeal for Ontario (1) affirming the judgment at the trial in favour of the defendant.

*PRESENT:—Sir Henry Strong C.J. and Taschereau Sedgewick, Girouard and Davies JJ.

(1) 2 Ont. L. R. 63.

1901

ROBINSON v. MANN.

The questions raised on the appeal are sufficiently indicated in the above head note, and the facts as far a they are material are set out in the judgment of the court.

Ryckman and *Kirkpatrick* for the appellant. The respondent having indorsed the note before the payee incurred no liability on it. *Steele* v. *McKinlay* (1).

If so there was no consideration for the mortgage. The Chattel Mortgage Act must be construed strictly. *Barber* v. *Macpherson* (2).

Hellmuth and *Saunders* for the respondent, were not called upon.

The judgment of the court was delivered by:

THE CHIEF JUSTICE (Oral). — We all think this appeal must be dismissed. The questions to be decided are: First: Did the respondent incur any liability by indorsing a note not made payable to him but to the Molsons Bank and not indorsed by the payee? Secondly: Were the recitals in the chattel mortgage of the consideration for which it was made sufficient?

As to the first point it appears that the note in question was in form as follows:

LONDON, Sept. 25th, 1899.

$1,200.00.

Three months after date I promise to pay to the order of the Molsons Bank, at the Molsons Bank here twelve hundred dollars for value received.

"W. MANN & CO."

Indorsed on the back was the name "George T. Mann."

Then the position was this; George T. Mann, the present respondent, indorsed a note signed by W. Mann & Co., and payable to the Molsons Bank. It is contended that he was not an indorser and as such liable to the bank to whom the note so indorsed was

(1) 5 App. Cas. 754. (2) 13 Ont. App. R. 356.

1901

ROBINSON v. MANN.

The Chief Justice.

delivered and by them discounted, Walter Mann receiving the proceeds.

Next, what was the legal effect of this endorsement? Section 56 of the Bills of Exchange Act, 1890, provides that

> where a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liability of an indorser to a holder in due course and is subject to all the provisions of this Act respecting indorsers.

Then when the bank took the note was it not entitled to the benefit of the respondent's liability as indorser? Certainly it was, for by force of the statute the indorsement operated as what has long been known in the French Commercial Law as an "aval" a form of liability which is now by the statute adopted in English law.

The argument for the appellant as I understand it is that this indorsement at most amounted only to a guarantee and that there being no consideration expressed in writing the statute of Frauds would have been an answer if the bank had sued the respondent. Some colour is given to this argument by the case of *Sanger* v. *Elliott* as reported in 4 Times Law Reports, p. 524, but there the Bills of Exchange Act was not referred to and it appeared that the bill had not been negotiated. It is to be remarked that that case is not to be found in the regular series of reports. Here however the note was negotiated and the bank were holders in due course and, consequently, the 56th section of the Act applies and creates a liability as indorser independently altogether of the principle of guarantee. If the section referred to is to have any effect it must apply in a case like this.

Then as to the recital in the chattel mortgage. It declares the indorsement of the note to be the consideration and sets out the note itself which is surely a sufficient compliance with the requirement of the

1901

ROBINSON v. MANN.

The Chief Justice.

Act that the consideration should be recited. It is not necessary that the mortgage should state the legal effect of the facts set out as forming the consideration. It is sufficient to state the facts and leave the legal effect to be inferred.

I agree with the reasons given by their lordships in the Court of Appeal for deciding this case in favour of the respondent, but I do not agree with Mr. Justice Osler who, I think, puts the case too favourably for the appellant when he says that the bank would have found it difficult to enforce the liability on the note against the respondent. In my opinion the respondent was clearly liable under the 56th section of the Bills of Exchange Act already referred to.

The appeal fails and must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Ryckman, Kirkpatriek & Kerr.*

Solicitors for the respondent: *Helmuth & Ivey*