J. GLEN GRANT (DEFENDANT).....APPELLANT;

AND

LEONARD SCOTT (PLAINTIFF).....RESPONDENT.

1919
*Nov. 6.
*Nov. 10.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

Promissory note—Non-indorsement by payee—Liability of indorser—"Bills of Exchange Act," R.S.C., [1906] c. 119, s. 131.

The indorser of a promissory note before it is indorsed by the payee may be liable as an indorser to the latter. *Robinson* v. *Mann*, 31 Can. S.C.R. 484, followed.

Judgment of the Supreme Court of Nova Scotia (52 N.S. Rep. 360), affirmed.

APPEAL from a decision of the Supreme Court of Nova Scotia (1), affirming the judgment for the plaintiff at the trial.

The defendant, to secure a debt due by one Holmes to the plaintiff, wrote his name across the back of a promissory note made by Holmes in favour of the plaintiff who afterwards wrote his name under that of defendant. The note was protested and an action brought against defendant as an indorser. The courts below held him liable.

Finlay Macdonald K.C. for the appellant. The plaintiff is not a holder in due course as the same is defined by section 56 of the "Bills of Exchange Act." *Steele* v. *McKinlay*(2); *Jenkins & Sons* v. *Coomber*(3); *Shaw* v. *Holland*(4); *Robertson* v. *Davis*(5).

In *Robinson* v. *Mann* (6), the respondent's liability on the note was not the issue.

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*PRESENT:—Sir Louis Davis C.J. and Idington, Duff, Anglin, Brodeur and Mignault JJ.

(1) 52 N.S. Rep. 360.
(2) 5 App. Cas. 754.
(3) [1898] 2 Q.B. 168.
(4) [1913] 2 K.B. 15.
(5) 27 Can. S.C.R. 571.
(6) 31 Can. S.C.R. 484.

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Neil R. McArthur for the respondent relied on *Robinson* v. *Mann* (1) and also cited *McDonough* v. *Cook* (2); *Davis* v. *Bly* (3).

THE CHIEF JUSTICE.—I am of opinion that the unanimous decision of this Court in the case of *Robinson* v. *Mann* (1), that under section 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, is conclusive in this appeal.

I myself was a party to that judgment. It has remained now for many years unquestioned and been accepted throughout Canada as law. I see no reason for raising any doubt now upon its correctness.

The appeal should be dismissed with costs.

IDINGTON J.—It seems to me that the question raised in the appeal herein is decisively concluded by the decision in *Robinson* v. *Mann* (1), and therefore that this appeal should be dismissed with costs.

DUFF J.—This appeal should be dismissed with costs.

I concur in the unanimous judgment of the court below that it is governed by the decision of this court in *Robinson* v. *Mann* (1).

ANGLIN J.—The appellant, intending to become a surety for the maker to the payee, wrote his name across the back of a promissory note. On precisely similar facts this court in *Robinson* v. *Mann* (1), held the defendant liable as an indorser by virtue of section 56 of the "Bills of Exchange Act" of 1890—now section 131 of R.S.C. 1906, ch. 119, made applicable

(1) 31 Can. S.C.R. 484. (2) 19 Ont. L.R. 267.
(3) 164 N.Y. 527.

to promissory notes by section 186. That decision has been uniformly accepted as the law of Canada in the provincial courts and by text writers of repute. The respondent makes the following references:—

Slater v. *Laboree*(1); *McDonough* v. *Cook*(2); *Knechtel Furniture Co.* v. *Ideal House Furnishers*(3); *Johnson* v. *McRae*(4), Falconbridge on Banking (2nd ed.) 701; Maclaren on Bills and Notes (2nd ed.) 334.

I had occasion shortly after becoming a member of this court to examine with some care how far the doctrine conveniently designated *stare decisis* should be held to govern it. *Stuart* v. *Bank of Montreal* (5), at p. 536. I have had no reason to change the views there expressed. Holding them, this case is for me concluded against the appellant by *Robinson* v. *Mann*. I may add that personally I agree with the interpretation there placed on section 56 of the "Bills of Exchange Act" of 1890.

BRODEUR J.—This case is concluded by the decision of this court in *Robinson* v. *Mann* (6).

By section 131 of the "Bills of Exchange Act," it is provided that when a person signs a bill otherwise than as a drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course and is subject to all the provisions of the Act respecting indorsers.

This section contains an important addition to the corresponding section of the Imperial Act and it would not be advisable then to follow the British decisions.

(1) 10 Ont. L.R. 648.
(2) 19 Ont. L.R. 267.
(3) 19 Man. R. 652.
(4) 16 B.C. Rep. 473.
(5) 41 Can. S.C.R. 516.
(6) 31 Can. S.C.R. 484.

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In the case of *Ayr American Plough Co.* v. *Wallace* (1), decided in 1892 on a promissory note made before the above addition, Sir Henry Strong stated that if the case were under the new law the defendant would have been held liable. This dictum was followed in the Province of Quebec where the doctrine had always existed. (Pothier, Traité du change, no. 132, art. 2311 C.C.) and also in some other provinces.

1892 *Balcolm* v. *Phinney* (2).

1894 *Watson* v. *Harvey* (3).

1895 *Fraser* v. *McLeod* (4).

1897 *Pegg* v. *Howlett* (5).

The question, as I said before, was finally settled by this court in 1901 in the case of *Robinson* v. *Mann* (6), where it was held that the Molsons Bank were holders in due course of a note made payable to their order and which the defendant had indorsed above them and that his indorsement was a form of liability which the "Bills of Exchange Act" had adopted.

I do not see any reason why this decision which has been followed should be changed.

The appeal fails and should be dismissed with costs.

MIGNAULT J.—The point to be decided in this case is a very simple one.

The appellant signed his name across the back of a promissory note whereby one Holmes promised to pay to the respondent $500.00 twelve months after date with interest at 8% per annum as well after as before maturity. He claims to have thus signed the

(1) 21 Can. S.C.R. 256.
(2) 30 C.L.J. 240.
(3) 10 Man. R. 641.
(4) 2 Terr. L.R. 154.
(5) 28 O.R. 473.
(6) 31 Can. S.C.R. 484.

note as security for Holmes. He now contends that he is not liable as an indorser of the note.

Section 131 of the "Bills of Exchange Act" (R.S.C., ch. 119), which applies to both bills of exchange and promissory notes, states that

> No person is liable as drawer, indorser or acceptor of a bill who has not signed it as such; provided that when 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.

In *Robinson* v. *Mann* (1), a similar case, it was said by this court, under the authority of section 56 of the "Bills of Exchange Act," 1890, now section 131, that a person who indorses a promissory note not indorsed by the payee may be liable as an indorser to the latter.

The fact that the payee, Scott, when he placed the note in the hands of the Royal Bank for collection, also indorsed the note, and he did so under the signature of the appellant, does not take the case out of the operation of section 131, and I cannot follow the argument of the appellant when he says that the respondent was not a holder in due course, for he clearly was one as the word is defined by section 56. *Robinson* v. *Mann*(1), is conclusive authority that the payee can hold as an indorser a person who signs the bill or note otherwise than as a drawer or acceptor.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Finlay Macdonald.*
Solicitor for the respondent: *Neil R. McArthur.*

(1) 31 Can. S.C.R. 484.