

It was Fawcett, and not the bank, who induced the plaintiffs to take over and rediscount the note, and, when the note was presented to the plaintiffs through the agent of the bank at Alliston, it bore the indorsement of the two payments above mentioned; and the examination of the plaintiff Knight discloses that he was made aware that these payments had been made by Fawcett in consequence of some trouble that had arisen between himself and the makers, and that the payments and indorsement had been made after the note was discounted. He said that Fawcett had explained that there had been some dissatisfaction by the makers, that he knew the note was given in payment for a horse, and that, with the knowledge that the payments had been made in consequence of some trouble between Fawcett and the makers, he caused his solicitors . . . to inquire what the trouble was . . . and . . . he learned, as he says, that they were trying to go very far with Mr. Fawcett in the matter—"I understood the makers were taking some action against Mr. Fawcett." He does not say that he heard Fawcett had been arrested, but I think the fair inference is, that both he and his solicitors were aware of this fact before he paid over any money on the note. . . . He believed there was no foundation for the trouble, as he had confidence in Mr. Fawcett.

I think the facts and circumstances . . . establish that the plaintiffs, before they acquired the note, were aware that the defendants had charged Fawcett, in a criminal proceeding, with having obtained the note by false pretences and fraud, and if, after that, the plaintiffs, without communicating with the alleged makers of the note, chose to acquire it, I think it must be held that they acquired it under such circumstances as to affect them with knowledge of the facts destroying the validity of the note as against the defendants. . . . The plaintiffs, when they took the note, were, under the circumstances, necessarily put upon inquiry as to the facts and circumstances under which the note was given, and they, therefore, were affected with notice of the illegality of the note, and therefore as to the interest in the note acquired from Fawcett, the plaintiffs are not holders in due course.

It was urged by Mr. Johnston that the \$799.25 paid by Fawcett was paid as security for his bail, and was intended to be held as bail for his appearance before the magistrate; but I find . . . that the money was not paid as bail, but was paid directly to the bank on account of the note, and was intended to be credited on the note as payment in part discharge of it.

Whether the payment was made under such circumstances as would amount to duress does not seem to me to affect the question of the plaintiffs' right to disregard it as a payment actually made