

payable to plaintiffs or order one month after date. The plaintiffs (Carpenter & Son) were stock and grain brokers in Toronto, and they alleged that they were, at the time the transactions leading up to the giving of the note were entered into, acting as agents for F. L. Camp & Co., who carried on a brokerage business in Buffalo up to the 30th April, 1901, when they failed. The defence was that defendant gave plaintiffs a number of orders to purchase and sell certain shares of stocks and bushels of grain, and plaintiffs informed him that they had purchased and sold in accordance with such orders; that in April, 1901, plaintiffs reported that in the transactions which were then outstanding there had been a large loss, and that a large sum of money was necessary to re-margin the transactions; that defendant, relying on such representations, gave the note in question as a security for margins in respect of such transactions, and not as an acknowledgment of any definite indebtedness to plaintiffs; that he subsequently discovered that the representations of plaintiffs that the transactions were actually made, were not true, and he then demanded back his note. He now counter-claimed for delivery up of the note and a return of moneys paid, etc.

G. Lynch-Staunton, K.C., for plaintiffs.

W. R. Smyth, for defendant.

MACMAHON, J., held, upon the evidence, that Camp & Co. were simply acting as plaintiffs' agents in receiving orders for the purchase and sale of stocks; that the chief losses on defendant's account occurred in respect of a purchase of 10,000 bushels of May wheat at 77 cents and a purchase of 20,000 bushels of May wheat at 76½ cents, alleged to have been made on the 18th March, 1901, in respect of which plaintiffs, at the request of defendant, remitted to their agents in Buffalo from time to time large sums in order to re-margin these purchases; that, although the margins sent by plaintiffs to Camp & Co. were narrow, and seemed to suggest bucket-shop dealings, it could not be found on the evidence that plaintiffs were aware that Camp & Co. had bucketted the orders given for the wheat; that defendant, when he gave the order for the purchase of the grain, knew it would have to be transmitted to a broker in Buffalo or Chicago, and he admitted that it was on a "keep good" order, that is, that plaintiffs were to advance the money to keep the deal good as the margins were called for. Therefore, that, unless it could be said that plaintiffs did not believe the transactions were bona fide and valid, and so were guilty of fraud in re-