The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

G. T. Walsh, for the appellants.

G. E. Newman, for the plaintiff, respondent.

RIDDELL, J., reading the judgment of the Court, said that the plaintiff received from the defendants a promissory note for $200, of which the defendants were makers. The Dominion Bank being the plaintiff's bank, the note was made payable there, and the plaintiff placed the note in the bank for collection only—he did not discount it or place it to his account or borrow money on it, but did endorse it in blank. The note was not paid at maturity, and the bank had it protested, sending notice to the plaintiff, as well as to the defendants. This action was brought in the County Court, and the defendants set up as a defence an agreement to extend the time for payment by renewal. The plaintiff claimed $200 and interest and the protest-fees. During the trial before Coatsworth, Co.C.J., without a jury, he asked why the action was not brought in a Division Court, and counsel said, "The protest-fees attached to it." After consideration, the learned County Court Judge directed judgment to be entered for the plaintiff for the amount of the note, interest, and notarial fees, and "costs on the County Court scale." It did not appear that he was exercising a discretion to award County Court costs in a case of the proper competence of a Division Court; but it was clear that he thought that the plaintiff could not have sued in a Division Court.

The defendants' appeal was restricted to the notarial fees and costs.

As to the notarial fees, those notified were the defendants and the plaintiff. The defendants were all makers of the note, and consequently were in the same case as acceptors of a bill: Bills of Exchange Act, R.S.C. 1906 ch. 119, sec. 186(2); and were bound without protest: sec. 109.

The bank was simply the agent of the plaintiff to collect the money on the note—it could not, by having the possession of the note, make the plaintiff liable to it; he was not liable on the note at all, but was the owner. It would be an absurdity to give the owner of a note notice for the pretended purpose of making him liable.

Protest was wholly unnecessary. That the bank did—if it did—charge these fees to the plaintiff was of no consequence. The plaintiff could not, by paying a wholly baseless claim, make the defendants his debtors for the amount paid.

The appeal should be allowed as to the notarial fees.

As to costs, the defendants raised and argued the point in the