

firm of Robinson & Green any authority to hold this note as their own or to sell it to the plaintiff Clark. Clark explains how he got the note, and (speaking of notes against J. B. Hill & Co.) says: "They were lying on the table and I spoke to Robinson about the value of them, and he said Mr. Honsinger was buying a couple of other notes, and I said, what is he paying? And he said, 8 or 9 cents, I forget which, on the dollar; and I asked if he would give me a chance, and he said, yes. Robinson and I had a current account. He owed me about \$23 at that time, and I said I would take the note for the account, and whatever is over I will do further work; and he said I could have it, so I took the note."

The examination of plaintiff Clark taken on the 22nd and 24th February, the whole of which I have read with care, satisfies me that the pretended purchase and taking over of this note by Clark was part of a scheme to vex and embarrass the defendants. J. B. Hill is apparently hopelessly insolvent, and is now out of the province. Clark is apparently a man not able to pay costs if costs are awarded against him. The estate of J. B. Hill & Co. was and is in litigation with Mr. Green, one of the firm of Robinson & Green, from whom plaintiff Clark says he got the note.

I have read all the affidavits and the material used on this motion, and the conclusion is irresistible that this is an action absolutely without merits.

The action is practically for the alleged sacrifice of the stock of J. B. Hill & Co. by a sale at 45 cents on the dollar. The interest of Hill under the circumstances can be considered as only nominal. The interest of Clark, if he was a bona fide holder for value of the note claimed, is only a pecuniary interest to the extent of a trifle.

Apart from application to dismiss for want of prosecution, the question would be whether the defendants should be protected by ordering the plaintiffs to give security for costs, as was done in *Smith v. Clarkson*, 7 O. L. R. 460, 3 O. W. R. 593, affirmed by a Divisional Court, 8 O. L. R. 131, 4 O. W. R. 55, or to have action dismissed as frivolous and vexatious.

As the plaintiffs have not thought proper to deliver a statement of claim, and as the action is not meritorious, there is no reason why it should not be dismissed for want of prosecution, and with costs.