

less. No bank would negotiate such paper, and Stirton had no more right, under sec. 31 of the Bills of Exchange Act, to fill in the amount in writing and the place of payment than wholly to fill up a blank piece of paper with only a signature upon it. It had to be filled up before it could be used, and it was filled up by Stirton. It was not delivered to Stirton in order that it might be converted into a note or negotiated as a note.

Sections 31 and 32 of the Canadian Bills of Exchange Act are practically the same as sec. 20 of the English Act. . . . In *Smith v. Prosser*, [1907] 2 K. B. 735, the language of that section has been dealt with and the sections have been construed. . . . That case governs the present one, and, upsetting as that case may be of the opinions of bankers here as to the true meaning of secs. 31 and 32, I must follow the authority. . . .

What the plaintiff did was not to give to Stirton a promissory note or a paper that could be converted into a promissory note, or that Stirton would have any right or authority to deal with in any way until he should get that authority after the plaintiff's application for insurance had been accepted. In a sense, Stirton was the plaintiff's agent. . . . The plaintiff made him the custodian of the paper with the plaintiff's signature, not as a note or to be negotiated as a note, but as evidencing an amount that the plaintiff would pay, should an examination be passed. . . .

Lloyd's Bank v. Cooke, [1907] 1 K. B. 794, . . . was considered in *Smith v. Prosser*, and was thought to have no application.

The fact that the note is now in the possession of the plaintiff can make no difference. It is at the defendants' call and for their use. The plaintiff has not, by obtaining it from the bank, in the circumstances given in evidence, and as to which there is no dispute, assented to or confirmed or ratified the use of his money in payment of it.

This action will not in any way prejudice the right of the defendants, if any, against the United Empire Bank.

There will be judgment for the plaintiff for \$440.50, with interest from the 4th December, 1908, at 5 per cent. per annum, and with costs.