

Almost immediately after Fawcett had obtained the signatures to the note, he discounted it in the Traders Bank at North Bay, and received the proceeds thereof. Some of the defendants learned of this fact the next day after the note was discounted, and immediately thereupon caused an information to be laid against Fawcett, charging him with obtaining the note by fraud and false pretences. Fawcett was brought before the magistrate at North Bay, and, after some evidence had been given, the case was adjourned, and his counsel proposed to take up the note at the bank and have it surrendered to the defendants, and on the 9th July, 1904, the note being dated 27th June, 1904, payable 10 months after date, Fawcett paid to the bank on account of the note two sums of \$599.25 and \$200, which payments were indorsed upon the note over the initials of the acting manager, and Fawcett promised that he would, in a few days, pay the balance to the bank, so that the note could be returned to the defendants.

The criminal proceedings were adjourned from time to time, and were eventually dismissed.

Instead, however, of Fawcett paying the balance upon the note, he proceeded to arrange to have it taken up by the plaintiffs. In September, 1904, the plaintiffs paid to the bank the balance of the note, less the two sums of \$599.25 and \$200, and paid the \$799.25, less the discount charges, to Fawcett. . . .

The bank were undoubtedly holders in due course, within the meaning of sec. 56 of the Bills of Exchange Act.

Section 57 of that Act provides that "a holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder."

There is no pretence for saying that the plaintiffs were parties to the fraud practised upon the defendants by Fawcett, so that undoubtedly whatever rights the bank possessed at the time of the delivery over of the note to the plaintiffs, the plaintiffs thereupon acquired. The only interest that the bank had in the note at the time was the balance of \$700.75 remaining unpaid. . . .

The plaintiffs, however, claim to recover . . . not only the amount they paid to the bank, but the \$799.25 paid to Fawcett. I think their right to claim the latter sum depends on whether or not they were affected by notice of the infirmity of Fawcett's rights under the notes, as it does not appear to me competent for the plaintiffs to rely upon the title of the bank to the note for any amount beyond the balance due to the bank at the time the note was delivered to the plaintiffs.