

holder to recover the amount of a promissory note from the makers and indorser. Defences of fraud in the procuring of the note, and of knowledge by the plaintiff of circumstances connected with the note, which either did in fact cause him to suspect the existence of something that would affect the validity of the note, or which were such as should have raised such a suspicion in his mind, and failure to make inquiry, were set up.

The jury found that defendants made the note; that there was no fraud in the procuring of the signatures to the note; that the plaintiff was a bona fide holder for value, and without notice of the circumstances attending the making of the note; and that the plaintiff did not, believing there was fraud in procuring the note, deliberately refrain from inquiring.

G. H. Watson, K.C., for defendants.

G. T. Blackstock, K.C., for plaintiff.

The judgment of the Court (MULOCK, C.J., ANGLIN, J., CLUTE, J.), was delivered by

ANGLIN, J.:—The defendants object to the charge of the trial Judge upon several points, and also maintain that the finding of absence of fraud is against the weight of evidence. But their chief objection is that the trial Judge refused to put questions to the jury to elicit their opinion whether the plaintiff—though he did not believe that the note had been fraudulently procured—in fact suspected that there were some facts affecting its validity, or, if he did not in fact so suspect, whether the circumstances, of which he was aware, were not such as would raise such suspicion in the mind of an ordinarily prudent man; and whether, in either case, he refrained from making such inquiries as he should have made to remove any such suspicion.

Mr. Blackstock's position is that nothing short of proof of suspicion in fact raises a duty of inquiry. Mr. Watson maintains that, if circumstances calculated to arouse suspicion in the mind of an ordinarily prudent man be shewn, though they did not in fact create such suspicion, the duty to inquire arises, and in default of inquiry plaintiff cannot recover.