

The plaintiff omitted to get the paper from Stirton, and Stirton, in fraud of and without the knowledge of the plaintiff, wrote the words "Home Savings Bank, Toronto," as the place of payment, upon the paper, filled in the amount in writing, and on the 6th October disposed of it to the United Empire Bank for value. On the 4th December, 1908, the United Empire Bank, by their agents, presented it to the defendants for payment. The defendants stamped their acceptance upon it, and charged the amount to the plaintiff against his savings bank deposit account. It went through the clearing house, and was subsequently paid by the defendants, the money reaching the United Empire Bank.

J. D. Falconbridge, for the plaintiff.

J. Bicknell, K.C., for the defendants.

BRITTON, J.:— . . . The case turns upon the application of the Bills of Exchange Act. Assuming for the moment that this paper . . . was delivered to Stirton as a note and for the purpose of being used by him as a negotiable instrument, and that it should be issued by him as such, the defence is made out. The United Empire Bank, in that case, were "holders in due course," within the meaning of sec. 56 of the Bills of Exchange Act. . . . The defendants, under sec. 57, have the same rights as the United Empire Bank.

In my opinion, the defendants ought not, without special instructions to pay, to have paid this note. . . . The question, however, is not one of good or bad banking, but what are the defendants' strict rights? *Grissom v. Commercial National Bank*, 87 Tenn. R., is authority against the defendants, and that case is buttressed by a very considerable amount of American case law. I am not bound to follow that, and I do not, as I am of opinion that, assuming the note to be without taint or suspicion, the defendants may treat the plaintiff's naming the place of payment as authority to pay, even without any general practice. . . . *Rymer v. Laurie*, 18 L. J. Q. B. 218, is authority in favour of the defendants as to their right to pay and charge up against a depositor's savings bank account.

There remains to be disposed of the right of the United Empire Bank, as holders in due course, to recover, upon the facts presented.

The paper in the hands of Stirton must be treated as if "a simple signature on a blank piece of paper" had been handed by the plaintiff to Stirton. Even if the paper had upon it some writing so that it appeared as above mentioned, it would be harm-