

the negotiations resulting in the sale proceeded, the parties cannot afterwards, by agreement between themselves, withdraw the matter from the agent's hands, and so deprive him of his commission.

Appeal dismissed with costs.

*Robson*, for plaintiffs. *McMeans*, for defendant.

Perdue, J.]

ALLOWAY v. HRABI.

[April 5.

*Promissory note—Signature of maker obtained by false representations—Rights of holder in due course without notice—Bills of Exchange Act, 1890, c. 33, ss. 29, 38.*

Action by the indorsees of three several promissory notes purporting to have been made by the defendants, payable to the order of the Winnipeg River Trading Company, and by it indorsed to the plaintiffs for value during currency. The defendants were Bohemians, none of whom could read English. One of them could write his name and speak a little English, but only such as would be used on the farm or in connection with farming or selling wood. The other two defendants could not speak or understand English and could not write. Their signatures were written by T. H. Corrigan, the manager of the trading company, with the usual X mark. Corrigan was the only witness who gave evidence to prove the signatures. The defendants desired to obtain homestead entries for the lands upon which they had squatted, and which were parts of an odd-numbered section not available for homesteads, and asked Corrigan's assistance in endeavouring to induce the Government to so modify the regulations that the entries might be made. Corrigan said that he agreed to do this for the defendants provided they would each pay him \$125 in case he was successful, and that the notes sued on were taken by him in pursuance of that understanding, and that he succeeded in obtaining the entries for defendants before the notes matured. The defendants admitted that they had agreed to give Corrigan \$125 each if he would obtain their homestead entries for them, but they said the amounts were to be paid in cordwood, to be delivered in one, two and three winters, a car-load to be delivered each winter. None of the defendants agreed to become responsible for the liability of the others.

At the time the notes were signed, Corrigan procured the defendants also to sign and swear to affidavits prepared by him in connection with their applications for homesteads, and defendants swore they had not knowingly signed any papers other than petitions to get homesteads. The trial judge's finding of fact was that defendants did not know that they were signing promissory notes, but thought they were signing only petitions for homesteads and affidavits in support thereof.

*Held*, following *Foster v. McKinnon*, L. R. 4 C.P. 704, and *Lewis v. Clay*, 77 L.T.R. 653, that the defendants were not liable.