

Held, per TOWNSHEND, J., and GRAHAM, E.J., that there must be a new trial on this ground.

Per WEATHERBE, C.J., and MEAGHER, J., on the facts, that there was no evidence of guilty knowledge and that the case should have been withdrawn from the jury.

Per RUSSELL, J. (who concurred that there was no evidence to warrant a conviction), that there were matters as to which it was open to the jury to draw a conclusion and that the case therefore was one which could not be withdrawn from them.

Attorney-General and T. R. Robertson, for Crown. Pelton, K.C., and E. H. Armstrong, for defendant.

Province of Manitoba.

KING'S BENCH.

Mathers, J.]

MOORE v. SCOTT

[Dec. 17, 1906.]

Promissory note—Holder in due course—Bills of Exchange Act, 1890, s. 29—Rescission of contract—Plea of fraud—Amendment asking for rescission—Restitutio in integrum.

Plaintiff sued as indorsee of a promissory note which was one of several notes signed by the defendants for the purchase price of a stallion sold to them by the agent of McLaughlin Bros. The note was dated October 27, 1902, and was payable Dec. 1, 1904, "with interest at seven per cent. per annum, payable annually." The plaintiff did not become the holder of the note until October, 1904, and he then knew that the defendants had not paid the interest that fell due in October, 1903.

Held, that plaintiff was not a holder of the note in due course as defined by s. 29 of the Bills of Exchange Act, 1890, as it had been dishonoured by the non-payment of the instalment of interest and plaintiff had notice of that, and that the defences of fraud and misrepresentation on the part of McLaughlin Bros. set up by the defendants were available to them as against the plaintiff in this action. *Jennings v. Napanee Co.*, 4 C.L.J. 595, followed.

The trial judge found as a fact that a gross fraud had been perpetrated upon the defendants by McLaughlin Bros. in selling