

account of the blank promissory note form not being stamped, it was held by the English Court of Appeal that the Act had not in this respect altered the law, and it was followed in our own Courts in *Hubbert v. Home Bank*, 20 O.L.R. 651, where the facts were substantially the same as in the present case.

By section 39 of the Act every contract on a bill is incomplete and revocable until delivery of the instrument in order to give effect thereto. In *Smith v. Prosser* the Court held that there had been no delivery to give effect to the instrument, but that it was delivered to Telfer, as a mere custodian, until he should receive further instructions, and that it was not delivered in order that it might be converted into a bill, so that section 31 would not apply.

In the reasons of appeal, and before us, it was claimed that *Smith v. Prosser* was not in point, because the bill was subject to what is our section 32, and was not enforceable, because not filled up in accordance with the authority, and because *Smith* was not a holder in due course, as the note was not complete and regular when first shewn to him, and he had notice that it was being completed pursuant to a limited authority. This is quite true, but the action was not dismissed on that account, but because it had never been delivered by *Prosser* to be completed as a bill, and consequently could not become a bill binding upon him.

It is argued that here the plaintiffs can recover as holders in due course under the proviso of section 32 which provides that "if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filed up within a reasonable time and strictly in accordance with the authority given." It will be observed that this applies only "to any such instrument," that is, to such an instrument as is mentioned in section 31, and one which has been "delivered by the signer in order that it may be converted into a bill," and does not apply to an instrument like this, delivered merely to be held to a bailee or custodian until further instructions are received from the signer. It is not pretended that such instructions were ever given, so that the instrument never became a note, for want of a proper delivery.

It was also argued before us that the defendant was liable on the ground of ratification. This was based solely upon the statement in the defendant's evidence that when *Thompson* came to Newmarket after the defendant had received the letter from the plaintiffs and the notice of protest, *Thompson* informed him that he had filled up the note for \$1,000, but that