

the note was made did not owe the Bates Machine Company anything. In putting off the note there was a fraud committed by the Bates Machine Company upon the defendants. The original agreement making the putting off a fraud was known to Joseph Winterbotham, who had the controlling interest in each of the three companies—the Bates Machine Company, the J. C. Pennoyer Company (plaintiffs), and the Winterbotham & Son Company. The fraud having been established, the onus was upon the plaintiffs to prove that they were bona fide holders for value without notice. Of this they have failed to satisfy the Court, the strong inference being the other way. The plaintiffs are not holders in due course, and are in no better position than the Bates Machine Company, and are not entitled to recover upon the note sued on. Joseph Winterbotham was in fact the active mind controlling the plaintiff company—was in constant and close touch with its management; the fraud was participated in by him with knowledge of the original agreement; he being the directing mind in this transaction, his action was the action of the plaintiffs, and they are bound by the knowledge which he possessed: *Lennard's Carrying Co. Limited v. Asiatic Petroleum Co. Limited*, [1915] W.N. 119.

The action is dismissed with costs.

MIDDLETON, J.

APRIL 15TH, 1915.

\*RE ROURKE.

*Lunatic—Order Declaring Lunacy—Reference—Jurisdiction of Master—Duty of Committee—Payment into Court—Lunacy Act, 9 Edw. VII. ch. 37, sec. 11(d)—Passing Accounts by Executor of Committee after Death of Committee and of Lunatic—Payments Made out of Lunatic's Estate—Gifts—Approval of Lunatic—Alleged Recovery of Sanity—Evidence—Lunacy Order not Superseded—Lunacy Act, R.S.O. 1914 ch. 68, sec. 10—Issues between Donees and Beneficiaries of Estate.*

Motion by Christine Holford, executrix of the will of Dennis Rourke, who was committee of the person and estate of James Rourke, declared a lunatic by order of the 16th June, 1908, by way of appeal from the ruling of the Local Master at Windsor that he had no jurisdiction to inquire whether the lunatic had in