accept for the price of the heaters the respondent company's promissory note at four months, and renew at maturity for the amount of the price of the heaters then unsold. And the respondent company was entitled under the agreement to but one renewal. The note in fact was renewed every four months down to the time of the giving of the note sued on, but that fact could not alter or affect the agreement as evidenced by the correspondence, the terms of it being unambiguous.

Reference to Innes v. Munro (1847), 1 Ex. 473.

If the above view were incorrect, and the Bates company was bound to renew from time to time for the price of the unsold heaters, the appellant company was entitled to recover even if not a holder in due course. The notes which were to be given were to be "bankable paper," and the Bates company intended to discount them and use the proceeds. This was inconsistent with the idea that, if that course were taken, the bank or person who discounted them, taking them with notice of the agreement, would be bound by it to renew, and therefore in the position that nothing could be recovered unless the heaters should be sold; and Winterbotham should not be in any worse position than a banker who discounted the notes.

At any rate, the appellant company was a holder in due course. The note was endorsed to Winterbotham, and by him to the appellant company, before its maturity, and in each case for value; and the appellant company had satisfactorily proved this, and that neither it nor Winterbotham had notice of the defect in the title of the Bates company, if defect there was.

Mere neglect, on the part of a transferee of a bill or note, to make inquiries which would have resulted in his ascertaining that the title of the transferor was defective is not enough to prevent him from being a holder in due course—the negligence must be such as to amount to the wilfully shutting of his eyes: Byles on Bills, 17th ed., pp. 147, 185, and cases there cited; Maclaren on Bills Notes and Cheques, pp. 29, 30, 184; Ross v. Chandler (1909), 19 O.L.R. 584; sec. 3 of the Bills of Exchange Act.

The appeal should be allowed with costs, and judgment should be entered for the appellant company for the amount of the note and interest with costs.

GARROW, MAGEE, and HODGINS, JJ.A., concurred.

MACLAREN, J.A., dissented, for reasons stated in writing.

Appeal allowed.