

OCTOBER 12TH, 1915.

*J. C. PENNOYER CO. v. WILLIAMS MACHINERY CO.
LIMITED.

Promissory Note—Action on, by Endorsee—Defence—Agreement Evidenced by Correspondence—Sale of Goods—Renewal of Note Given for Price—“Bankable Paper”—Transfer of Note—Holder in Due Course—Defect in Title of Transferor—Notice—Negligence in Making Inquiries—Effect of.

Appeal by the plaintiff company from the judgment of CLUTE, J., 8 O.W.N. 279.

The action was brought by the appellant company as endorsee of a promissory note, dated the 8th December, 1913, made by the defendant company, payable to the order of the Bates Machine Company, endorsed by that company in blank, and endorsed by Joseph Winterbotham to the appellant company.

The defence was that the note was a renewal of a previous one given to the Bates company for the price of a car-load of heaters, which the defendant company permitted to be delivered at its warehouse, pursuant to an arrangement, one of the terms of which was that a promissory note should be given by the defendant company, but the note was to be kept renewed until all the heaters should be sold; that nothing was now payable under the terms of the arrangement; that the appellant company was bound by those terms, and was not a holder of the promissory note in due course.

The trial Judge gave effect to this defence, and dismissed the action.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

E. F. B. Johnston, K.C., and Gideon Grant, for the appellant company.

G. F. Shepley, K.C., and G. W. Mason, for the defendant company, respondent.

MEREDITH, C.J.O., read a judgment, in which, after setting out the facts, he said that he was unable to draw from the correspondence the conclusion that the agreement which it evidenced was one by which the respondent company was merely a consignee of the heaters, holding them for the Bates company. On the contrary, it evidenced an out and out sale to the respondent company, and an agreement that the Bates company would