

The plaintiffs were private bankers at Fort William, and the defendant lived at Newmarket.

The defendant had purchased certain lands at Port Arthur, upon which were buildings requiring repair. He authorised his agent, one Thompson, residing at Port Arthur, to make the repairs, and appended his signature to a blank form of promissory note, which he gave to Thompson, telling him to fill it up and use it to pay for the repairs, in case he (the defendant) had not the money to send for the repairs. Thompson was to notify the defendant what the expense was, and then, if the defendant had not the money to send Thompson, the latter was to use the blank, but not otherwise. The repairs were never made, but Thompson, without notifying the defendant, filled up the blank note, making it appear to be a note for \$1,000 made by the defendant, and gave it to the Union Bank of Canada as collateral security for his (Thompson's) indebtedness to that bank. Being indebted to the plaintiffs in \$600, and being pressed for payment, Thompson arranged that the plaintiffs should pay his indebtedness (\$100) to the Union Bank, and take and hold the note as collateral security for the plaintiffs' own debt and the \$100. This was done. The note was not discounted either by the Union Bank or the plaintiffs, but in each case was held as collateral security. The defendant received no value or consideration.

J. E. Swinburne, for the plaintiffs.

H. E. Choppin, for the defendant.

CLUTE, J.:— . . . I find as a fact that the defendant never intended or authorised the paper sued on to be filled up as a promissory note; that the circumstances never arose upon which only the agent Thompson was authorised to fill the same up; that what was done by Thompson was without authority and in fraud of the defendant; and that the paper sued on never in fact by the defendant's authority became a promissory note.

Upon these facts—upon which I entertain no doubt—I do not think the plaintiffs are entitled to recover. . . .

[Reference to secs. 31 and 32 of the Bills of Exchange Act; *Smith v. Prosser*, [1907] 2 K. B. 735; *Lloyd's Bank Limited v. Cooke*, [1907] 1 K. B. 794; *Baxendale v. Bennett*, 3 Q. B. D. 525; *Bank of Ireland v. Evans's Trustees*, 5 H. L. C. 389.]

The evidence of the defendant in this case shews him to be a most simple minded man, almost in his dotage, I should say. The very fact that he left the blank in the hands of Thompson as he did, resting entirely upon the honesty of Thompson, to advise