

order of Bates Machine Company, at the Imperial Bank of Canada, Toronto, for \$840. The following endorsements appeared on the note, in the order given:—

“Bates Machine Co. N. O. Bates, treasurer.

“Pay J. C. Pennoyer Company or order. Joseph Winterbotham.

“Pay to the order of Continental and Commercial National Bank 2171 Chicago, Ill., 2171. All previous—J. C. Pennoyer Company, George I. Nervig, treasurer.

“Pay to the order of the Royal Bank of Canada. Continental and Commercial National Bank of Chicago, Nathaniel R. Ross.”  
Across this endorsement was the word “cancelled.”

The note was a renewal and arose out of an agreement entered into between the defendant company and the Bates Machine Company (third parties) in 1907. This agreement was found exclusively in the correspondence between the defendants and the third parties.

The defendants carried on business in Toronto as sellers of machinery; the third parties were manufacturers in Joliet, Illinois.

The defence was that the third parties in negotiating the note to the plaintiffs had committed a fraud upon the defendants; that the plaintiffs were mere trustees of the note for the third parties; that the plaintiffs were not holders in due course; and that they had full notice and knowledge of the facts when they received the note.

The action was tried without a jury at Toronto.

Gideon Grant, for the plaintiffs.

G. F. Shepley, K.C., and G. W. Mason, for the defendants.

The third parties were not represented.

CLUTE, J. (after setting out the facts and the correspondence):—I do not think that the plaintiffs are holders of the note in due course, or that their title is better than that of the Bates Machine Company. The course of the transaction clearly indicates to my mind, aside from the actual notice which, I think, is brought home to the plaintiffs through Joseph Winterbotham, that the note was not dealt with in the ordinary way. It was not protested; notice was not given to the previous endorsers; the defendants were not notified by either Winterbotham or the plaintiffs when the note passed into their hands; and the fact that the note was a foreign note, made in a foreign country