

H. Mellish, K.C., for plaintiffs.

W. B. H. Ritchie, K.C., for defendant.

MEAGHER, J.:—A quantity of glass of the value of \$128.23, ordered by the defendant from the plaintiff arrived at Halifax in the spring of 1909, with other goods ordered by the plaintiffs from Belgium. All were consigned to the plaintiffs and there was nothing in the packages to distinguish those for the defendant from the plaintiffs' other orders. The defendant was informed of the arrival, and late in April an invoice of his order was sent to him. The terms of payment were thirty days after arrival of the goods, though strictly speaking, that meant thirty days after he was supplied with the invoice.

The defendant failed to direct delivery of the goods to him from Deep Water where they were landed, consequently they were all removed to the plaintiffs' warehouse. Soon after the defendant ordered nineteen boxes of the forty-five to be sent to him, which was done. The balance remained on the plaintiffs' premises awaiting his further orders, and were destroyed by fire on the 5th of May, 1909.

After the nineteen boxes were delivered the defendant was applied to to sign a note at thirty days for the amount of the order. He sought and obtained the plaintiffs' consent to a note for sixty days, urging as a reason that he had other bills coming due at the end of thirty days, and did not want to have to meet all together. The defendant agreed to pay and did pay the interest on the extra thirty days.

The note then made is the one sued on. It was not made for the plaintiffs' convenience or accommodation. Neither party so understood or regarded it. The giving of the note meant the assumption by him of liability for the amount of the order. He had already received part of the goods and the balance was, I am persuaded, held by the plaintiffs for his convenience and subject to his order and to be delivered as he required or had accommodation for them.

I have said that he signed the note after he received part of the goods; his letter of the 9th of July is to that effect, but I should have so found independently of the letter.

A demand and refusal of the balance of the order was pleaded but not proved. The defendant admitted he never sought delivery of them at any time. It seems to me that