

payment in disregard of the condition upon which the acceptance was given.

It was argued that the transaction, as put forward by the defence, was improbable, because the plaintiffs would get no benefit out of it. That view is not correct. There was a very large indebtedness, in addition to the overdrawn account, of the New Hamburg company to the plaintiffs, upon which the plaintiffs were likely to lose, as their local manager said, a large amount. The obtaining of this conditional acceptance operated in effect an equitable assignment by making the amount of \$2,500 become payable to the plaintiffs upon the acceptance of the machines by the defendants from the New Hamburg company, and upon the amount due thereon becoming payable by the defendants.

In my view, the oral evidence was admissible to establish the condition upon which the defendants signed the acceptance.

There was some evidence given that there was no indebtedness from the defendants to the New Hamburg company; but it was agreed that the decision of this question should stand over until the state of account should be ascertained by the liquidator of the company.

Judgment, therefore, will not issue until that question is settled. If it be found that there was no indebtedness, the action should be dismissed with costs. If there was an indebtedness, the judgment should be for the plaintiffs, with costs, for the amount of the bill, if so much is due, or such lesser sum as may be found due. (For such reduction, see *Holmes v. Kidd*, supra.)

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SUTHERLAND, J.

MARCH 20TH, 1915.

RE SHORT.

*Will—Construction—Payment of Quarter of Annual Income of Estate to Widow Quarterly—Meaning of “Quarterly.”*

Motion by the Toronto General Trusts Corporation, the executors and trustees under the will of William B. Short, deceased, for an order determining a question arising as to the proper construction of a clause of the will.

The motion was heard in the Weekly Court at Toronto.

C. A. Moss, for the applicants.

F. W. Harcourt, K.C., for the infants.

SUTHERLAND, J.:—The particular clause is as follows: “10. I direct the said company out of the income of my estate to pay