

MEREDITH, C. J.

MARCH 6TH, 1903.

TRIAL.

WATEROUS ENGINE WORKS CO. v. LIVINGSTON.

Sale of Goods—Conditional Sale—Property not to Pass till Payment of Price and other Indebtedness—Construction of Contract—Right of Vendors to Re-take Goods.

Action to recover goods sold by plaintiffs to defendant.

W. S. Brewster, K.C., for plaintiffs.

I. F. Hellmuth, K.C., for defendant.

MEREDITH, C.J.—If the property in such of the goods as are mentioned in the order given by defendant to plaintiffs on 13th September, 1900, was not to pass to defendant until he had paid not only for these goods but any other indebtedness which he might incur to plaintiffs at any time before all the goods which were supplied under that order were paid for, plaintiffs are entitled to succeed as to all the machinery and other articles described in the statement of claim which are mentioned in the order.

According to the provisions of the order, the property in the goods which defendant ordered was not to pass to him "until full payment of the purchase price and interest . . . or any other account incurred during the currency of this agreement."

The effect of this term of the agreement is, I think, to prevent the property in any of the goods which were furnished to defendant in pursuance of the agreement passing to him until he had paid, not only the purchase price of these goods, but also any other indebtedness which he might incur to plaintiffs at any time before delivery of the goods which were ordered had been completed. . . .

In this view it is unnecessary to consider the questions as to the application of payments discussed at the trial. . . .

The other order of 10th November, 1900, being in the same terms, the Trevor lathe and appliances which defendant received must be taken to be subject to the terms of that order, and, as something is due by defendant for the goods supplied to him in pursuance of the terms of it, plaintiffs are entitled to succeed as to the lathe and its appliances and such other of the articles mentioned in the order as were supplied to defendant. If defendant's counsel is of opinion that any of the articles claimed by plaintiffs are, upon the view now expressed, not recoverable by plaintiffs, counsel will be heard and a reference, if necessary, directed. Subject to this, there will be judgment for plaintiffs for the recovery of the goods claimed, with costs.