

DIVISIONAL COURT.

FEBRUARY 21ST, 1910.

*STECKER CO. v. ONTARIO SEED CO. LIMITED.

Contract — Transfer of Assets of Partnership to Incorporated Company—Assumption of Liabilities — Right of Creditor of Partnership to Payment by Company—Promise to Pay Debts —Correspondence—Promissory Notes — Acceptance of Company as Debtor—Novation.

Appeal by the defendant company from the judgment of FALCONBRIDGE, C.J.K.B., in favour of the plaintiffs in an action to recover the amount of the indebtedness of a partnership composed of the defendants Herold and Kusterman, doing business, before the incorporation of the defendant company, under the name of "The Ontario Seed Company," for goods supplied down to the 1st April, 1909. Judgment was given for the plaintiffs against the defendant company for \$1,621.50, with interest.

On the 10th April, 1909, an agreement was made by which the partnership was to transfer all its assets and property to a new concern, to be incorporated and called "The Ontario Seed Company Limited"—the present defendants. It was a term of the transfer that it was to be subject to the liabilities of the old partnership, which were to be assumed by the new corporation. The assets and property turned over were valued at \$41,000, and the liabilities to be taken over and provided for were ascertained to be \$28,175, of which the plaintiffs' claim was one. A bill of sale was duly executed after the incorporation. The patent issued to the defendants on the 15th April, 1909, and they were certificated as entitled to begin business on the 22nd June, 1909. The prospectus of the company, filed in the proper office, set forth that this company had "purchased the former business and assets, subject to the liabilities of the said firm, which are to be assumed by the new company." A copy of this prospectus was sent by the defendant company to the plaintiffs on the 6th May, 1909, with a letter regretting that the new company could not send a cheque, but "expected to be shortly in a position to meet your account," and trusted that an extension of time would be given. The directors of the new company were the defendants Herold and Kusterman and three others.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

*This case will be reported in the Ontario Law Reports.