

After the giving and acceptance of the note and the delivery of the part of the goods above referred to the warehouse with the balance of the goods was destroyed by fire.

*Held*, 1. The extension of time asked for and given to defendant involved a change of position on the part of plaintiffs constituting consideration for the note.

2. There was an implied promise on the part of plaintiffs to deliver the balance of the goods and to pay damages in the event of their failure to do so.

*Semble*, that in order to support the defence of failure of consideration defendant must prove a demand and refusal. And if the title passed and plaintiffs were merely holding the goods as agents or bailees of defendant they were at defendant's risk and there was no failure of consideration.

*Mellish*, K.C., for plaintiffs. *W. B. A. Ritchie*, K.C., for defendant.

Drysdale, J.—Trial.]

[November 10.]

FENERTY v. CITY OF HALIFAX.

*Water and water courses—Public supply—Storage system—Private owners—Reservation of rights for milling purposes—Limitation of.*

By a deed made in 1846, between plaintiffs' predecessors in title and the city of H., the city was given the right in connection with its water supply system to bring the waters of Long Lake into the Chain Lakes for storage purposes and the right of plaintiff's predecessors to receive water for their mills was expressly limited to the quantity of water naturally flowing theretofore from the Chain Lakes.

*Held*, that plaintiffs' rights must be based upon the natural flow of water from the Chain Lakes as it existed prior to the date of the deed, and that they were concluded by the terms of the deed from asserting the right to a greater flow by reason of the fact that the city had constructed extensive storage dams and had made one large water-shed and had increased the flow by bringing into the Chain Lakes other streams.

*Fenerty*, for plaintiffs *Bell*, K.C., for defendant.

Longley, J.]

[November 19.]

THE KING v. MCKAY.

*Intoxicating liquors—Certiorari—Second application.*

Application was made to a judge of the Supreme Court to remove a conviction for a violation of the Liquor License