

On the 16th December, 1910, he made a written proposal to Pearson to supply these machines for \$3,000; the machines to be shipped on the 1st March, 1911; payment to be made by promissory note for \$1,000 at sixty days from the 1st January, 1911; and a further note for \$2,000 to be dated on the date of the delivery of the machines, and to be payable on the 20th May, 1911.

Three copies of the proposal were made, one of which was signed by Moyer for himself and the defendant company, and the others by the name of Moyer only. All these were accepted in writing by Pearson, "subject to confirmation by the Owen Sound Iron Works Company Limited." Pearson then gave to Moyer his promissory note, dated the 1st January, 1911, for \$1,000, payable to the order of the defendant company at sixty days on which was written, "On account of one Emerick grinder to be delivered 1st March, 1911." Moyer took the three copies of the acceptance to have them confirmed by the defendant company.

On the 15th March, the \$1,000 note not having been paid, the defendant company drew on Pearson for the amount, and he, on the 23rd March, accepted the draft. That draft not having been paid, the defendant company, on the 27th March, again drew on him at thirty days. He did not accept this draft. On the 11th April, the machinery about that time having been delivered at the plaintiffs' works (but not installed), Moyer went to Pearson and received from him a cheque payable to the defendant company for \$1,000, expressed on the face to be "account Maple Leaf Portland Cement Company, Emerick coal grinder," in payment of his note of the 1st January, and his acceptance of the 23rd March. Pearson also then gave to Moyer his promissory note to the defendant company for \$2,000, representing the balance of the purchase-money.

Delay having occurred in the delivery of the machinery to the plaintiffs, Pearson, on the 6th April, wrote to the defendant company complaining that there was delay, and stating that "according to our arrangement" the time for delivery had passed, threatening to cancel the contract immediately if delivery was not made, and adding, "If you are not going to deliver the one you agreed to, just say so immediately." The reply of the defendant company, dated the 7th April, was this: "We have yours of the 6th inst. . . . and in reply would say that we are shipping your pulverizer together with the separator on Monday 10th inst. . . ."

Letters were sent by Pearson to the defendant company on