

Held, reversing the judgment of the County Court Judge in defendant's favour that defendant having violated her agreement by commencing proceedings in the Probate Court and having succeeded in setting the will aside, could not set up the agreement as a defence to plaintiff's action on the note.

Per RITCHIE, J., dissenting, that the trial judge having found all the facts in defendant's favour, one ground being that the note sued on was accommodation, there was no reason for not accepting his view.

In an action on a second note for the sum of \$150, defendant, on the trial, sought to give evidence to shew that the note, although expressed to be payable on demand, was made subject to a condition that defendant should not be called upon for payment unless her children should die before a legacy to which they were entitled under the will of A.C. should become payable.

Held, affirming the judgment of the County Court Judge, that the note being absolute on its face evidence could not be given to vary its terms, there being no evidence to shew that it was given on a condition, or as an escrow, or only to be treated as a note in a certain event.

W. A. Henry, for appeal. *W. B. A. Ritchie*, K.C., contra.

Full Court.] AKTIESELSKABET HECKLA v. S. CUNARD & CO. [March 8.

Charter of vessel—Contract made by letter and telegram.

Plaintiffs, through their agents H., and defendants negotiated for the chartering by plaintiffs to defendants of the steamer T., then at Chatham, N.B. Defendants desired to have the steamer delivered to them at North Sydney, but, after some negotiation, on the 9th October, offered to take delivery at Chatham and use the vessel for three months if navigation remained open. Plaintiffs declined to take the risk of navigation remaining open, and on October 15th plaintiffs offered to close at three months and take the risk of navigation remaining open. On the same day plaintiffs' agents replied "have closed in accordance your telegram to day and arranged delivery North Sydney." On the following day defendants replied "Telegram received closing T. Try to get her delivered North Sydney end October."

Held, 1. dismissing defendants' appeal, that defendants, by their telegram of October 15th, in view of previous correspondence, disclosed an intention to authorize a contract accordance to what had already been expressed in writing and that the reply to that telegram conveyed all that was required to embody the terms of the charter.

2. The defendants, when the contract was once concluded, could not by continuing the correspondence and raising other questions escape the effect of the mutual terms previously agreed upon.

Harris, K.C., for appeal. *T. R. Robertson*, contra.