

payable under a contract for the supply to the defendants of one special 50 horse power engine complete with all necessary attachments, and one 500 sixteen candle power dynamo with certain attachments. While the action was proceeding the company was ordered to be wound up, and the plaintiff John A. Mackay was appointed permanent liquidator while the trial was going on. Thereupon the trial Judge added him as a party plaintiff.

The appeal was heard by MOSS, C.J.O., MACLAREN, MEREDITH, and MAGEE, J.J.A.

G. H. Watson, K.C., for the plaintiffs.

E. F. B. Johnston, K.C., and R. McKay, K.C., for the defendants.

Moss, C.J.O. (after stating the facts):—The contract put forward and relied upon by the plaintiffs bears date the 12th of May, 1908. It is a printed form filled up and completed in pencil writing and signed on behalf of the defendants. As completed it is a somewhat loosely constructed instrument, and in some respects at all events does not represent the condition of affairs actually existing at the time. For example, although both the plaintiffs and defendants were resident and carrying on business in Toronto, the defendants request the company to ship to their address . . . from Toronto, Ontario . . . the goods . . . free on board cars or boat or launched at Toronto Bay. It is quite manifest that none of these modes or places of delivery was contemplated in this instance, and we are driven to look outside of the instrument in order to ascertain the real state of the case as understood by the parties when the bargain was made between them. The only address of the defendants that appears in the writing is "44 Richmond E." written underneath the signature. It is shewn that they were at that date, and still are, carrying on an extensive business as proprietors of a restaurant, bowling-alleys, billiard and pool-rooms, etc., in a large building, the south fronting on Richmond street east and the north fronting on Queen street east.

No time is specified within which delivery of the articles is to be made, but by the terms of payment—which, if the whole of the printed matter be read together with the pencil-writing, are ambiguous if not unintelligible—\$500 was to be paid in cash on delivery of the engine, another \$500 when it was running, and a further \$500 when both engine and dynamos were running properly.