

not a condition which necessarily extends the time of payment beyond sixty days after proofs of the claim have been furnished, for it may well be that the amount may be ascertained within the period mentioned. Appeal dismissed with costs.

MARCH 28TH, 1903.

DIVISIONAL COURT.

CROMPTON AND KNOWLES LOOM WORKS v.
HOFFMAN.

*Damages—Breach of Warranty on Sale of Machine—Loss of Profits
—Defect in Machine—Property not Passing.*

Appeal by defendants from judgment of MACMAHON, J. (1 O. W. R. 717), allowing plaintiffs' claim and dismissing defendants' counterclaim. Action to recover the price of a goring loom and fittings which plaintiffs agreed to manufacture and deliver to defendants for \$662.63, payable one-half cash, one-quarter on 1st December, 1900, and one-quarter on 1st April, 1901; the property to remain in plaintiffs until paid for. Counterclaim for damages for loss of profits by reason of the defective condition of the machine supplied, for the time and labour expended in endeavouring to make it work, for the material it spoiled, and for the services of an expert, etc.

G. G. McPherson, K.C., for defendants.

E. Sidney Smith, K.C., for plaintiffs.

The judgment of the Court (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) was delivered by

STREET, J.—The plaintiffs agreed either that the loom with its fittings should be shipped to defendants on or about 25th June, 1900, or else that it should be shipped within a reasonable time from the giving of the order, and, looking at all the circumstances, it is not unreasonable to hold that it should have been shipped so that defendants might, had it been complete and properly constructed, have been able to work profitably upon it by the 1st August. But plaintiffs never in fact supplied all the fittings they had agreed to supply, and they never supplied a loom properly constructed to do the work required of it by defendants, and to do which plaintiffs well knew the machine had been ordered.