

be set up. But the Court of Appeal (Lindley, Lopes and Kay, L.JJ.) differing from North, J., held that it is of the essence of a floating security that it allows the company to carry on business in its ordinary way until a receiver is appointed—and therefore as there was a total failure of consideration as to the money paid for the barrels not delivered, Harvey & Co. were entitled to sue for so much of the price as money had and received to their use, and were entitled to set off this amount as against the debt due by them to the company for rent. Another point in the case turned upon the powers of a managing director to bind a company. It appeared that before the appointment of a receiver Harvey & Co. had pressed the company for payment of their claim for short delivery of the barrels, and at a meeting between them and the three directors of the company it was proposed, but not finally settled, that the company should issue debentures to Harvey & Co. by way of security, and should hypothecate various debts due and owing to the company. This meeting was adjourned to the following day when only two directors were present (three being a quorum), but the managing director was one of those present. At this meeting Harvey & Co. advanced to the company money to pay wages, and the managing director gave them a letter signed by him on behalf of the board, by which in consideration of Harvey & Co. finding cash for payment of wages and barrels, he agreed to execute a deed in conjunction with the board of directors, creating and issuing to them the remainder of an issue of debenture stock, and he also gave them orders, signed by him as managing director, addressed to debtors of the company, informing them that the debts owing by them were hypothecated by Harvey & Co. By the articles the directors were authorized to appoint a managing director, and to delegate to him such of the powers of the board as they thought fit; and it was not disputed that the board had power to hypothecate. There was, however, no minute showing the appointment of the managing director, or what powers had been delegated to him. The Court of Appeal also differed from North, J., on this branch of the case, and held that the securities given to Harvey & Co., as