

Defendant does not insist on retaining the whole of the \$2,000, but only so much thereof as is sufficient to satisfy J. J. Walsh's claim, assigned to her, and her costs. This she is entitled to do, apart from the question of defendant's right to sue plaintiffs for the cause of action so assigned. There will therefore be judgment for defendant on the counterclaim for \$975 and costs. Plaintiffs will be entitled to the balance of the \$2,000 after deduction of \$975 and defendant's costs of action and counterclaim.

T. A. Gorhan, Port Arthur, solicitor for plaintiffs.
W. McBrady, Port Arthur, solicitor for defendant.

FALCONBRIDGE, C.J.

MARCH 25TH, 1902.

TRIAL.

DAVIS v. RIDEAU LAKE NAVIGATION CO.

Principal and Agent—Liability of Company—Holding out of Person as General Manager—Costs.

Action to recover \$1,217.42, balance due plaintiffs in respect of rebuilding and repairing steamer "James Swift," and repairs to steamer "Rideau Queen;" tried at Kingston.

E. H. Smythe, K.C., for plaintiffs.

J. L. Whiting, K.C., for defendants.

FALCONBRIDGE, C.J.—Notwithstanding the alleged holding out of defendant Noonan as general manager of defendant company, there are too many elements of notice to plaintiffs to look to Noonan for payment, and of election of plaintiffs so to do, to entitle them to recover against the company. The company and Noonan defended by the same solicitor, and there are other good reasons why in dismissing plaintiffs' action as against the company costs should not also be imposed on plaintiffs.

Judgment granted against defendant Noonan for \$1,217.04, and interest from 17th October, 1901, and costs. Plaintiffs to credit \$15.50 paid into Court by defendant company. Action, as against defendant company, dismissed without costs.

Smythe & Lyon, Kingston, solicitors for plaintiffs.

J. L. Whiting, Kingston, solicitor for defendants.

BOYD, C.

MARCH 26TH, 1902.

WEEKLY COURT.

CENTAUR CYCLE CO. v. HILL.

Sale of Goods—Action for Price—Counterclaim for Damages—Report of Referee—Varying on Appeal—Further Directions—Costs.

An appeal by the plaintiffs and cross-appeals by each of the defendants from the report of James S. Cartwright, an