

George Wilkie, for the defendants.

F. Arnoldi, K.C., for the plaintiffs.

MULOCK, C.J.:—The defendants in partnership operate a telephone system in the Elk Lake District. The plaintiffs are manufacturers of telephone supplies in Buffalo, in the State of New York, and as such made and sold the switchboards in question, partly for cash and partly on credit, to the Norton Telephone Company of Toronto. Part of the purchase-money remained unpaid, and this action is brought to recover the same, and, in default of payment, for a declaration that the switchboards are the property of the plaintiff company.

The Norton company sold the switchboards to the Silver Belt Company, who gave back a mortgage upon them for the unpaid purchase-money. Default having been made by the Silver Belt Company, one Seymour bought the switchboards under the mortgage, and, in turn, sold them to the defendants, who became bona fide purchasers for value without notice of the plaintiffs' alleged lien.

The Norton Company having made default in payment to the plaintiffs, the latter, through their solicitors, notified the defendants of the alleged lien. Thereupon Mr. Reece, one of the partners in the defendants' firm, proceeded to Buffalo, and there had an interview with certain of the plaintiffs' representatives; and it is contended on the part of the plaintiffs that on that occasion an agreement was reached between the parties whereby the plaintiffs agreed to reduce the amount of their claim to \$400, and that Reece, for the defendants, agreed to pay the same and to recognise the plaintiffs' alleged lien. The defendants deny any concluded agreement on the occasion in question.

The onus is upon the plaintiffs to establish the alleged agreement, but a careful examination of the evidence fails to satisfy me that Reece made any concluded bargain with the plaintiffs. I, therefore, agree with His Honour that the defendants did not become personally liable; and, therefore, the plaintiffs' appeal should be dismissed.

As to the defendants' cross-appeal that the plaintiffs are not entitled to a lien, reliance is placed upon the Conditional Sales Act, R.S.O. 1897 ch. 149, which enacts (sec. 1) that a condition that the ownership in a chattel shall not pass "shall only be valid as against subsequent purchasers or mortgagees without notice in good faith for valuable consideration in the case of manufactured goods or chattels, which, at the time possession is given to the bailee, have the name and address of