

Finally, on 22nd May, 1902, plaintiffs succeeded, through an agent, in obtaining an oral explanation from defendants. Then they wrote defendants again asking them to send back the yarn or what was left of it, and that they would pay freight and duty on it, but no notice was taken of this request, and this action was begun on 12th August, 1903.

The trial Judge gave judgment for plaintiffs for the amount of their claim, less \$25 allowed for the estimated cost of redyeing. He also dismissed a counterclaim for loss of profits.

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

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

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

STREET, J.—It is clear that the yarn in parcel 2, invoiced at \$52.44, and parcel 4, invoiced at \$117.45, was not of the color ordered, and that plaintiffs consented to defendants' course of accepting the other two parcels, invoiced at \$195.67, and rejecting parcels 2 and 4. The defendants purposed having it redyed in Canada, and to this the plaintiffs . . . practically assented . . . Defendants seem to have gone through a series of experiments for months, all the while refusing to pay for the yarn they had used or to give any answer or explanation to plaintiffs or to return the unused yarn on any terms. I think their conduct amounts to a waiver of the right which they originally had to refuse to accept or pay for the yarn; or, if the yarn is to be treated as the property of plaintiffs, then to a conversion of it, and that plaintiffs are entitled to recover. I can find no evidence upon which the counterclaim can be supported. Appeal dismissed with costs.

NOVEMBER 16TH, 1903.

DIVISIONAL COURT.

RAY v. OLIVER.

Chose in Action—Equitable Assignment—Oral Promise to Repay Overdraft at Bank from Specified Source.

An appeal by plaintiffs from the judgment of the Judge of the District Court of Thunder Bay in favour of defendant in an interpleader issue, tried before him without a jury.