

ing the note, and Living said he had several thousand dollars in the business, and that Fox was willing to apply that on the note. It was agreed that the business was to go on, and he was to work off the note in that way. Living says further that in July, 1908, he was wrongfully excluded from the business by Fox, and for that reason he should not be called on to pay the \$2,000, as the consideration thereby failed. Fox denies that the purchaser Living was so excluded, but says that for good cause and breach of fidelity he ended the engagement as to carrying on the business. These things between Fox and Living were not made known in any way to the bank, who had the note in their possession all along. On the 24th November it appears that Fox was not under direct liability to the bank, but afterwards became indebted, so that on the 1st March, 1909, his total indebtedness was \$1,046.90, and the writ was issued on the 2nd March, claiming \$2,140.54 and interest.

The bank sue on the promissory note and hold it for value so far as Fox is indebted to the bank, and can recover to this extent under secs. 54 and 70 of the Bills of Exchange Act. There is no equity attaching to the note, though it may be regarded as repledged to the bank after it was overdue. Whatever collateral matters may arise as between Fox and Living which may enure to the discharge of the sureties quoad Fox, they are not open for discussion on this record. To the extent of the bank's claim, judgment should be given for payment with costs; as to the residue of the note, the bank hold it as trustees for Fox, and the right thereto should be litigated in some proceeding to which Fox and Living are parties. This may be ingrafted on the present record—or, what is perhaps better, a new action may be instituted in respect of it, in which the interests of Fox and the three makers of the note may be properly considered and adjudicated on.

DIVISIONAL COURT.

JUNE 29TH, 1910.

WAGNER v. CROFT.

Sale of Goods — Refusal to Accept Part—Action for Price of Whole—Contract—Shipment in Instalments—Late Shipment—“About”—Evidence to Shew Intention—Correspondence—Remedy in Damages.

Appeal by the defendants from the judgment of the County Court of York in favour of the plaintiff in an action to recover \$697.92, the balance of the price of goods sold and delivered. The