

in getting it, but I do not find that he had made any request for it before that.

The plaintiffs have never been misled by any attitude of the defendants into thinking that the 60-day requirement would be waived. The defendants' position throughout was asking more information, and I see no justification for furnishing such insufficient proofs, and then insisting on strict rights as if they had been sufficient. The defendants are, in my view, entitled to the benefit of the condition, and both the actions were premature. In consequence, the defendants are entitled to their costs, and, in view of the unjust claim put forward by the plaintiffs as to the amount of loss, and the necessity of shewing the propriety of their demand for information, I do not think the defendants should be limited to the costs of that issue, but be entitled to their whole costs of defence, which will be set off pro tanto against the amounts payable by the defendants.

Unless otherwise arranged between the plaintiffs and the Northern Crown Bank, the balance will be payable to the bank.

During the trial, at the instance of the Court, Mr. Lawson, agreed upon by the parties, was called in to examine and report upon the mass of invoices, sale orders, and other items. His reasonable fees, unless otherwise arranged by the parties, should be allowed as part of the costs in the cause.

JANUARY 22ND, 1909.

DIVISIONAL COURT.

EVANS v. BANK OF HAMILTON.

*Promissory Note—Accommodation Indorsement—Transfer to Bank as Collateral Security for Debt of Maker of Note—Transactions between Bank and Maker—Release of Note—Payment—Action to Recover Amount Paid—Fraud and Misrepresentation—Statute of Limitations—Appeal—Costs.*

Appeal by plaintiff from judgment of RIDDELL, J., 12 O. W. R. 791, dismissing the action.

P. D. Crerar, K.C., for plaintiff.

G. T. Blackstock, K.C., and L. F. Stephens, Hamilton, for defendants.