

bec, were delivered by a railway company, by mistake, at Aylmer, Ontario. The defendants, pursuant to a message received from the railway company, "Ship by express C.'s trees to Aylmer, Quebec," carried the trees as far as Ottawa, and were about to send them on by wagon to Aylmer, Quebec, when C., who was the only person known in the transaction by the defendants, appeared at Ottawa and said to the defendants' agent that he would not accept the trees until he saw one F. There were no further communications between the defendants and C. The defendants held the goods and sought out the consignors and notified them of C.'s refusal.

*Held*, in an action by the consignors for damages for non-delivery and conversion of the trees, that the defendants' contract was not one to deliver the goods to C., at Aylmer and not elsewhere, and his refusal to accept, even if not absolute, was such as dispensed with any further action on the part of the defendants till they had a message from C. that he was ready and willing to receive; and this never having come, the defendants acted reasonably in holding the goods and notifying the consignors, and were not liable for the loss.

The findings of the jury not having supplied material for a final disposition of the case, the Court, acting under Con. Rule 615, instead of directing a new trial, set aside the findings and gave judgment on the whole case for the defendants, deeming that if the proper questions had been put to the jury they could have been answered in only one way.

Judgment of the County Court of Wentworth reversed.

*J. W. Nesbitt, K.C.*, for defendants. *Logie*, for plaintiffs.

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Boyd, C., Street, J., Britton, J.]

[March 19.

ROBINSON v. MCGILLIVRAY.

*Bankruptcy and insolvency—Preferential transfer of cheque—Deposit with private banker—Application by banker upon overdue note—Absence of pre-arrangement and of intent to prefer.*

On the 5th September, 1904, a merchant, being then insolvent, sold his stock-in-trade to G. at 50 cents on the dollar, and received in payment G.'s cheque on the defendants' private bank