

of the price of materials supplied for use in the building which was being erected. The order was presented to the owner, but was not accepted in writing, although it was held over to await the time for making payments under the contract. The contractor failed to complete the work, and it was finished by the owner at an outlay which left the balance of the contract price insufficient to meet the full amount of the order.

Held, the Chief Justice and Idington, J., dissenting, that the order was effective as an assignment of money payable under the contract, but, as there was no evidence of a promise to pay the amount thereof out of the fund or of facts precluding the owner from denying the sufficiency of what ultimately was payable to the contractor, it could not be enforced against the owner as an equitable assignment.

Per Duff, J. :—As the equitable relief sought could be granted only upon evidence which was not to be found in the record and no claim therefor was made in the courts below, the claim came too late on an appeal to the Supreme Court of Canada.

Per Fitzpatrick, C.J., and Idington, J., dissenting.—As the equivocal conduct of the owner had the effect of inducing the materialman to abstain from filing a lien to protect himself, the owner ought to be held liable for the full amount of the order as an equitable assignment.

Lafleur, K.C., for appellant. *Gerald V. Pelton*, for respondent.

Province of Ontario

SUPREME COURT, HIGH COURT DIVISION.

Magee, J.A.]

[Jan. 14.]

BANK OF OTTAWA V. SHILLINGTON.

Promissory note payable on demand—Interest—Effect of letter making demand.

While a demand note may be sued without prior formal demand, a promissory note payable on demand for a fixed amount "with interest at seven per cent." will cease to carry interest at that rate when the holder makes a demand by letter for payment. The interest after demand so made is to be computed at the statutory rate of 5 per cent.

H. H. Dewart, K.C., for plaintiff. *W. J. Tremecar*, for defendant.

NOTE.—This case is not reported elsewhere.