

“Each specification as it comes in will be accepted or rejected as if it were a new order independent of any contract. Further than this we cannot go.”

This seems to bear upon both classes of contracts, the old as well as the new, and shews very clearly, when the whole letter is read, that the receivers and managers absolutely refused not only to perform the old contracts, but to be committed by any kind of contract, new or old, to a continuous supply of paper at a fixed or agreed-upon price.

At the same time it is to be remembered, in explanation of equivocal circumstances, that all parties were looking forward to a resumption of business by the paper company. In that business the defendants were interested, not merely as customers but as proprietors; and it was a perfectly natural as well as proper thing that the supply of paper to which the defendants had been accustomed, and upon the faith of which they had entered into contracts, the breach of which would entail loss, first upon them, and afterwards upon the paper company, should, as far as was consistent with their duty, be kept up by the receivers and managers, and the ultimate damages thereby minimised. But, bearing all that in mind, and having regard to all the other facts and circumstances, there being no express adoption of the paper company's contracts by the receivers and managers, and assuming that they had power to do so, it would, in my opinion, be absolutely impossible to imply such an adoption from anything which appears in the evidence. Nor is it shewn that the receivers and managers themselves, as such officials, entered into contracts, after their appointment, for a continuous supply of paper of which the defendants have shewn breaches either before or after the plaintiffs acquired title.

The proper, and, in my opinion, the only reasonable, inference upon the whole evidence, is that the merchandise, the proceeds of which were assigned to the plaintiffs in May and June, 1907, was supplied to the defendants upon the terms contained and set forth in the letter of the previous 6th April from the receivers to the defendants, not upon any earlier contract, but as entirely new orders.

But, if I am mistaken in this view of the facts, I would still, upon the law, be unable to see how the defendants can succeed. Their claim is distinctly one of set-off and not of counterclaim. That question was disposed of when the case was in this Court before, upon the question of pleadings: see 18 O.L.R. 665. The receivers and managers were not dealing with their own goods,