

[27th June, 1885.]

TAYLOR, J., delivered the judgment of the Court (a):—On the 1st of December, 1882, the defendants, Sydenham Miller, Alexander McQuarry and Robina Story, trading under the firm name of Miller, McQuarry & Co., purchased from Morrison Brothers, Toronto, a quantity of machinery under a written contract, the terms of payment being thus stated: "One half by draft with bill of lading attached at 60 days from shipment, with eight per cent. interest and exchange; balance by drafts at six and nine months, with eight per cent. interest and exchange. May draw at three months and renew, so as to mature as per agreement above."

On the 15th of December Morrison Brothers drew two drafts, one at sixty days for \$814.30, and another at three months for \$817.60. These were discounted with the Quebec Bank at Toronto, and by the bank sent on to Brandon for acceptance by the defendants.

The machinery was not shipped until the 20th of December. On the 5th of January, 1883, the two drafts came back to Toronto, the one at sixty days having been accepted. Of the three months draft acceptance was refused. The same day another draft for \$817.60, dated the 20th of December, 1882, the day on which the machinery had been shipped, and payable at three months' date, was drawn by Morrison Brothers and sent by the plaintiffs for acceptance. This draft was accepted, and is the one now sued on. The machinery on its way from Toronto to Brandon was damaged in a railway collision, and was returned to Morrison Brothers to be repaired. The railway company paid as damages a sum which paid the sixty-day draft. When the machinery had been repaired, Morrison Brothers refused to forward it to the defendants unless they gave security for the payment of the balance still due. This they refused to do, the contract not providing for any such being given. Then Morrison Brothers made an assignment for the benefit of creditors, the machinery was sold by the assignees, and the defendants have never received any value for their acceptance. The first ground of defence to the present action raised by the defendants is, that the bill was never accepted by the firm. The

(a) Present: Wallbridge, C.J., Dubuc, Taylor, JJ.