

the breaking of which caused the accident to deceased, was such that no reasonably careful man in his position would have used it, as he must have used it on the Sunday in question. It was obviously not intended for such use. Moreover, upon the evidence adduced on behalf of plaintiff, I do not think the jury could properly have found that deceased, when injured, was engaged in the course of his employment by defendants, which, in ordinary circumstances, extended from Monday morning to Saturday at noon in each week: *Holmes v. Mackay*, [1899] 2 Q. B. 319. This excludes the application of the statute. The only finding made by the jury negatives the existence of any right of action at common law.

Action dismissed with costs.

FEBRUARY 7TH, 1905.

DIVISIONAL COURT.

IMPERIAL BANK OF CANADA v. HINNEGAN.

Bills of Exchange—Action on—Defence of Payment—Bills Accepted for Goods Sold—Destruction of Goods by Fire—Application of Insurance Moneys—Interest of Vendees—Insurable Interest—Trust—Notice—Indemnity.

Appeal by plaintiffs from judgment of MEREDITH, J., in so far as in favour of defendants in an action on bills of exchange.

J. Bicknell, K.C., for plaintiffs.

J. S. Fraser, Wallaceburg, for defendants.

The judgment of the Court (MEREDITH, C.J., MACMAHON, J., MAGEE, J.), was delivered by

MEREDITH, C.J.—The action is brought against defendants as acceptors of two bills of exchange, each for \$525, dated 12th October, 1903, drawn by A. H. Raymond on and accepted by them, and payable 5 months after date; and the defence is that the bills were given in payment of the price of 700 bushels of flax seed sold by Raymond to defendants; that it was one of the terms of the sale of it that Raymond should keep the flax seed, while it remained in his possession pending delivery to defendants, insured against fire for the benefit of defendants; that plaintiffs had notice of all this when they became holders of the bills; that at the time of their purchase of the flax seed it was, with the rest of the contents of a warehouse belonging to Raymond, in which the