event, it was evidence only. Had the plaintiffs accepted the cheque, as the result shewed they should have, the matter would have been settled; but, having rejected it, they could not maintain that the defendants were in a worse legal position in fact than they would have been without it.

The statement of defence shewed that the defendants thought they were liable for $781.08. If the plaintiffs had accepted that sum, the action would have ended; but, as they did not, the defendants were not bound by their estimate.

The defendants paid $781.08 into Court, but that was not prejudicial to them, not being accepted in full: Rule 308; Barrie v. Toronto and Niagara Power Co. (1905), 11 O.L.R. 48.

The plaintiffs had recovered less than the amount paid into Court: they should pay the costs of the action subsequent to the payment in. They were offered, before action, more than they were entitled to: they should have no costs of the action up to the time of payment in.

The plaintiffs failed on both the appeal and the cross-appeal; the defendants succeeded in both; and the plaintiffs should pay the defendants' costs of both.

The judgment should be that the defendants receive out of Court the sum of $72.07, also the amount of their costs from and after the payment into Court, including the costs of the appeal and cross-appeal. If the amount in Court is not sufficient to pay the $72.07 and the costs, the plaintiffs should pay the balance; if there should be any balance in Court after payment of the $72.07 and the costs, the plaintiffs should receive it.

Reference to Powell v. Vickers Sons & Maxim Limited, [1907] 1 K.B. 71; Best v. Osborne (1896), 12 Times L.R. 419.

LATCHFORD and MIDDLETON, JJ., agreed with RIDDELL, J.

MEREDITH, C.J.C.P., agreed in the result, with some hesitation, for reasons briefly stated in writing.

Judgment below varied in defendants' favour.