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No. 28.

COURT OF APPEAL.

MARCH 24TH, 1911.

STRONG v. VAN ALLEN.

Contract—Trading Company—Sale of Shares, Business, Assets, Stock, and Goodwill—Assumption of Liabilities by Purchaser—Salary of Manager—Transfer of Property before Action—Costs.

Appeal by the defendant from the judgment of a Divisional Court, 1 O.W.N. 539, and cross-appeal by the plaintiffs in respect of two items upon which the Divisional Court decided adversely to them. The facts are fully stated in the report cited.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

G. Lynch-Staunton, K.C., for the defendant.

N. W. Rowell, K.C., for the plaintiffs.

MOSS, C.J.O.:—The contest between the parties arises out of an agreement in writing between the plaintiff Strong and the defendant for the sale by the latter of the assets, property, effects, business and goodwill of Eli Van Allen & Co., Limited, the terms of which are fully set out in the pleadings and the opinions of the learned Judges, and need not be repeated.

The form in which the transaction was consummated was by a transfer to the plaintiff Strong or his nominees of all the shares of the capital stock of the company, but the substance was as above stated.

As I read the offer contained in the letter of the 30th November, 1906, addressed by the defendant to the plaintiff Strong, and accepted on the 5th of December following, taken in connection with the option or offer of the 1st of November therein referred to, and in the light of the surrounding circumstances,