

and it is agreed that this order embodies all agreements between us, I hereby waiving all agreements not embodied in this order. This order taken subject to the approval of J. & J. Taylor. Copy left with me.

Witness:

(Sgd.) E. S. Wilband. (Sgd.) C. E. McLaughlin."

There are two questions raised by the defendant but the only question of any substance was whether the defendant having refused to take the safe at Annapolis the plaintiff should recover the price of the safe or damages for the refusal, in other words, whether the property passed to the defendant or not.

In the ordinary course the agreement to pay f.o.b. Toronto, net cash, would settle the question that it did pass. But this printed clause that the title should not pass until the whole price was paid was not struck out of the instrument, although I think its use was only intended for cases of credit or instalments. I think I cannot reject it. That it would have the effect of keeping the title in the plaintiff notwithstanding the expression f.o.b., I refer to the case of Polson v. Degeer, 12 O. R. 275.

The amended statement of claim covers a case for damages, and the plaintiff's argument that he was entitled to the price rather than damages does not at all affect his right to recover damages.

The other contention made by the defendant was that there was a rescission. The contract, by mistake of a new hand bears a wrong date, in fact the date on which the safe was to be delivered. As a fact plaintiff's agent took the order about the 10th of October, 1907. It was approved by the plaintiffs on the 14th of October, of which fact the defendant was notified by mail from Toronto. On the 16th of December, 1907, the defendant himself, from Annapolis, wrote to the plaintiff at Toronto:—

"Please cancel order of the 10/10/07 (i.e., the 10th of October, 1907), for safe. I do not want same, going to U. S. A. first of year." The plaintiff refused to do this, sending on the safe. But it is contended that as the date of this letter of the 16th December, 1907, is before the apparent date of the contract, March 1st, 1908, the letter of revocation was in time. The contention amounts to this, if you are bound by the apparent date of the instrument, that the contract was revoked by the defendant before it