

balance, but that they did not seek: *Tyers v. Rosedale and Ferryhill Iron Co.* (1875), L.R. 10 Ex. 195.

There was an obvious failure on the part of the buyers to keep the account in satisfactory condition; and they lost the right to demand credit. There was also a "failure to meet payments when due;" and the sellers acquired the right, at their option, to ship with sight-drafts attached to the bills of lading or to refuse to ship at all. They exercised their option; the last three shipments were with a sight-draft attached to the bill of lading; and it was not open to them, when further shipments were called for, to make a new election, and, because of the old defaults, to refuse to ship at all. But, after the last shipment, a mistake as to \$18.33, which the sellers had paid for freight and had neglected to include in their draft, was discovered, payment was demanded, and was not made. This sum was "due" when it was demanded; and, when a subsequent order for 3,620 bags was received from the buyers, it was open to the sellers to say, as they did, that, as their past-due account had not been paid, they would not make further shipments. There was no answer to the defendants' contention in this regard, unless the default was waived. But there was nothing which amounted to a waiver of the right of the defendants to say that, because of the failure to meet the payment of \$18.33 when due, they would refuse to make further shipments.

The defendants contended that, the contract being with a firm which was dissolved by the death of a partner, the plaintiffs had no right of action. Upon this point, *McCraney v. McCool* (1890-91), 19 O.R. 470, 18 A.R. 217, was against the defendants.

The action should be dismissed with costs.

Damages, in case the plaintiffs should hereafter succeed, assessed at \$6,839.

MASTEN, J.

JUNE 15th, 1917.

STRUTHERS v. CHAMANDY.

Assignments and Preferences—Assignment for Benefit of Creditors—Previous Transfer of Leases and Buildings to Creditor—Chattel Mortgage on Buildings (Treated as Chattels) Made to Person Advancing Money—Priorities—Buildings Found to be Fixtures—Preference—Assignments and Preferences Act—Intent—Present, Actual, Bona Fide Advance of Money—Costs.

Action for a declaration that the plaintiffs were entitled to a first lien upon certain leases of lands and buildings on the lands,