

When the bank received payment from the railway company, it did not in any sense receive money belonging to the plaintiffs or money impressed with any trust in favour of the plaintiffs; and this was so even if the Local Judge was wrong in holding that the railway company was not indebted to the defendant at the date of the service of the attaching order.

The appeal should be dismissed with costs.

RIDDELL, J., agreed with ROSE, J.

LENNOX, J., agreed that the appeal should be dismissed with costs.

MEREDITH, C.J.C.P., dissented, for reasons stated in writing.

*Appeal dismissed; MEREDITH, C.J.C.P., dissenting.*

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SECOND DIVISIONAL COURT.

SEPTEMBER 28TH, 1917.

HENRY HOPE & SONS LIMITED v. CANADA FOUNDRY CO.

*Contract—Supply of Manufactured Material for Building—Delay from Unavoidable Cause—"Strike" of Workmen—Reasonable Time—Responsibility—Evidence—Action for Damages for Refusal to Accept—Claim of Defendants against Third Parties—Third Party Procedure—Rules 165 et seq.*

Appeal by the defendants from the judgment of LATCHFORD, J., 12 O.W.N. 168.

The appeal was heard by MEREDITH, C.J.C.P., HODGINS, J.A., RIDDELL and LENNOX, JJ.

J. A. Paterson, K.C., for the appellants.

George Wilkie, for the plaintiffs, respondents.

M. K. Cowan, K.C., for the R. Lyall & Sons Construction Company Limited, third parties, respondents.

RIDDELL, J., in a written judgment, said that the third parties had a contract for the erection of a building at Calgary, and, desiring certain material, made a contract with the defendants (of Toronto) for the same. The defendants made a contract