

did not prevent a suit on the contract without previous arbitration.

I therefore hold that there is jurisdiction in this Court to try this action, notwithstanding the clause relating to arbitration in the bought and sold notes.

The second question is, was there a contract, and if so, what were its terms? The whole agreement, whatever it was, is contained in letters and telegrams or in bought and sold notes, or in both combined. On 1st October, 1903, the defendants wrote to Delmarle Brothers, brokers in New York, saying: "We offer two cars prime wood evaporated apples delivered New York 5½ October delivery; see what you can do for us on these lines." On 5th October Delmarle Brothers telegraphed: "Letter dated 1st, just received; sold the two cars prime wood dried 24th October delivery 5½ delivered; confirm." On the same day Delmarle Brothers wrote to the defendants confirming the telegram, and on 6th October the defendants replied to Delmarle Brothers by telegram saying, "Confirm sale two cars October delivery 5½." And on 7th October Delmarle Brothers wrote the defendants: "We beg to acknowledge receipt of your telegram and confirm sale of the two cars prime wood dried evaporated for October, and herewith hand you enclosed contract, accepted; kindly accept duplicate and return to us. These goods are sold to Messrs. Aspegren & Co., and we are glad to place the goods with this firm, as we consider them one of the best in the business."

The wording of the bought and sold notes enclosed in that last letter is as follows: "Sold for account of Messrs. Polly & White, Trenton, Ontario, to Messrs. Aspegren & Co., New York City, one care 600 boxes prime wood dried evaporated apples, crop 1903, at 5½ cents per pound, delivered New York with free lighterage, seller to have the option of delivering the goods in bond; terms, sight draft against bill of lading; draft to be held for arrival and examination of goods. Any difference arising under this contract to be settled by arbitration." These notes were signed, "Delmarle Brothers, brokers." The broker Delmarle made his entry in his book of this transaction as follows: "October 7th, 1903, Polly & White, 600 boxes evaporated wood at 5½, Aspegren & Co., October;" and the second entry is: "Polly & White 600 boxes evaporated wood dried 5½ Aspegren & Co., October." Delmarle says, however, that these entries