

OCTOBER 21ST, 1904.

DIVISIONAL COURT.

TAYLOR v. McCLIVE.

*Sale of Goods—Destruction on Vendor's Premises—Liability
—Damages.*

Appeal by defendant from judgment of BRITTON, J., in favour of plaintiff for the recovery of \$2 per barrel for a quantity of apples sold by defendant to plaintiff and destroyed by frost before they left defendant's premises.

The appeal was heard by BOYD, C., MEREDITH, J., IDINGTON, J.

C. A. Masten and F. C. McBurney, Niagara Falls, for defendant.

W. M. German, K.C., for plaintiff.

BOYD, C.—Having read all the evidence and exhibits, I see no reason to disturb the financial result of the judgment as given by my brother Britton, and the appeal will be dismissed with costs.

It would be well to have the terms settled by the trial Judge as to the manner of delivery of the barrels from defendant to plaintiff, and this may well be done on the settling of the minutes of the formal judgment, if it has not yet been drawn up: if it has, the matter may now be spoken to before one of the Judges of the Divisional Court.

MEREDITH, J., concurred.

IDINGTON, J.—I think, for the reasons given by the learned trial Judge, that his judgment should not be disturbed. I have carefully read the evidence, and do not see how the learned Judge could have come to any other conclusion than he did in regard to all the facts bearing upon the contract and the breaches thereof.

Possibly some room exists for a difference of opinion in regard to the amount of damages. There is, however, evi-