

FIRST DIVISIONAL COURT.

JANUARY 12TH, 1917.

## CRAWFORD v. McMILLAN.

*Contract—Formation—Sale of Goods—Correspondence—Evidence  
Statute of Frauds.*

Appeal by the defendants from the judgment of the County Court of the County of Welland in favour of the plaintiff in an action to recover damages for the breach of an alleged contract by the defendants for supplying the plaintiff with 400 bags of potatoes at 78 cents a bag, delivered at Ridgeville.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A.

C. R. McKeown, K.C., for the appellants.

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

MEREDITH, C.J.O., reading the judgment of the Court, said that the alleged contract was evidenced by the correspondence which passed between the parties, partly by letters and partly by telegrams, supplemented by an alleged oral agreement; and the main defence relied on was that there was no concluded contract, and at all events no contract in writing sufficient to satisfy the Statute of Frauds.

In answer to an inquiry by the plaintiff, the defendants wrote to him on the 20th September, 1915, quoting a price of 78 cents per bag for a car-load of potatoes to be delivered at Welland. On the 22nd September, the plaintiff wrote to the defendants suggesting that the price was too high. On the 28th September, the defendants replied that they could not quote a lower price. The plaintiff said that he communicated with the defendants by telephone on the 29th September, before the letter of the 28th had reached him, and that an arrangement was then made between them, by word of mouth, for the sale and purchase of a car-load of potatoes at 78 cents per bag, delivered at Ridgeville. This was denied by the defendants; what they had said was that they would endeavour to supply a car-load at 78 cents per bag, but would not promise to do so. They also testified that on the 29th, before the conversation by telephone, they had written to the plaintiff cancelling their quotation of the 28th, and that the plaintiff was so informed at the outset of the conversation. On the 30th September, the plaintiff wrote to the defendants: "Confirm order by