

The appeal was heard by MULOCK, C.J. EX., CLUTE, RIDDELL, and SUTHERLAND, JJ.

W. G. Owens, for the appellant.

A. H. Boddy, for the plaintiffs, respondents.

THE COURT dismissed the appeal with costs.

FIRST DIVISIONAL COURT.

OCTOBER 23RD, 1918.

J. L. MICHAELSON & SONS LIMITED v. BABB.

Sale of Goods—Dispute as to Value—Mistake of Vendor in "Approval Bill"—Knowledge of Vendee—Price Agreed upon.

Appeal by the defendant from the judgment of the Judge of the County Court of the County of Perth in favour of the plaintiffs, in an action in that Court, brought to recover \$37.50 as the value of some rings and \$140 as the value of a parcel of 8 diamonds or brilliants all sold by them to the defendant.

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

R. S. Robertson, for the appellant.

Glyn Osler, for the plaintiffs., respondents.

MAGEE, J.A., reading the judgment of the Court, said that no question arose as to the rings, and the only question as to the brilliants was, whether they should be charged for as weighing 1.44 carats or 1.75 carats, the price being \$80 per carat. In making out the "approval bill," the plaintiffs, by mistake, entered the package as weighing 1.44 carats; but the trial Judge, who saw the witnesses, had found the fact of mistake, and that the weight was really 1.75 carats; and that finding could not be questioned.

The conclusion to be drawn from the whole evidence was, that the defendant knew of the substantial difference in weight, and that there was a mistake, before he sold any of the brilliants.

The plaintiffs on finding out their mistake asked either to be paid for the true value or to have the goods returned. The defendant refused to return even those on hand, unless with their mounts, and on being paid for the mounting. The plaintiffs notified him that as soon as the period of credit expired they would sue for the corrected price. Whether the plaintiffs were entitled as for a