

which they still had on hand at the time of the trial. If the plaintiffs had made prompt efforts to minimise their loss, they could have sold this yarn at as good a price as that realised for what was sent to New York.

It was not proven that the defendants' letter of the 5th December was too late to be effective as regarded the 1,500 lbs. The plaintiffs' right to ship must be treated as having ceased when that letter was received; and there was no such breach by the defendants of any contract relating to such yarn as was still in the plaintiffs' possession when the letters of the 10th December were written, announcing the defendants' refusal to accept delivery under order 1788.

After the defendants had refused to accept the yarn, the plaintiffs managed to find a purchaser for the 4,350 lbs. sent to New York, and realised all but \$435 of the price which the defendants had agreed to pay. The defendants were entitled to credit for the amount so realised, and their liability in respect of that lot was \$435. The contract-price of the yarn sent to Cleveland was \$4,373.40, and of that sent to Minneapolis \$6,453.70. These amounts—\$11,262.10—the defendants must pay; and they would be entitled, upon payment, to the possession of the yarn which was still in the Customs.

Judgment for the plaintiffs for \$11,262.10, with costs.

SUTHERLAND, J.

SEPTEMBER 22ND, 1919.

BARTRAM & BALL LIMITED v. BISHOPRIC
WALL BOARD CO. LIMITED.

Sale of Goods—Contract—Supply of Laths—"Mill Run"—Quality of Laths Shipped—Refusal of Purchasers to Accept—Evidence—Onus—Description—Counterclaim—Damages.

Action for damages for breach of an alleged contract by the refusal of the defendants to accept and pay for certain quantities of laths which the plaintiffs had shipped or were ready to ship to them. Counterclaim for damages on account of the plaintiffs' failure to supply laths of the quality contracted for.

The action and counterclaim were tried without a jury at Ottawa.

J. F. Orde, K.C., and M. G. Powell, for the plaintiffs.
G. F. Henderson, K.C., for the defendants.