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No. 4

APPELLATE DIVISION.

SEPTEMBER 21ST, 1915.

CANADA SAND LIME PRESSED BRICK CO. v. ORR
BROTHERS.

*Sale of Goods—Contract—Evidence—Finding of Trial Judge—
Appeal.*

Appeal by the defendants from the judgment of the Senior Judge of the County Court of the County of York in an action in that Court brought to recover \$145.25 for bricks sold and delivered to the defendants. The judgment appealed from was in favour of the plaintiffs for the recovery of \$125 and costs, and dismissing the defendants' counterclaim with costs.

The appeal was heard by FALCONBRIDGE, C.J.K.B., MAGEE, J.A., and LATCHFORD and KELLY, JJ.

Gideon Grant, for the appellants.

R. D. Moorhead, for the plaintiffs, respondents.

FALCONBRIDGE, C.J.K.B., delivering the judgment of the Court, said that the facts were fully set out in the judgment of the learned County Court Judge, who accepted the evidence of the plaintiffs' agent, Hunter, as to the contract, and refused to accept Orr's evidence. The Judge saw the witnesses, and it was for him to say. It was not a case in which (as in *Beal v. Michigan Central R.R. Co.* (1909), 19 O.L.R. 502) the finding was based on any misapprehension of the evidence. On the contrary, there were circumstances which amply justified a finding in the plaintiffs' favour both on this point and as to what took place before the bricks over and above the 4,000 were unloaded.

If the defendants had found fault at the proper place (the Bathurst street siding), the plaintiffs could and would have diverted the whole shipment, as they in fact did with the other 3 cars, and the whole trouble would have been avoided.

A great deal was said at the trial about the colour. The