

FIRST DIVISIONAL COURT.

OCTOBER 27TH, 1920.

## FURNIVAL v. EDWARDS.

*Contract—Goods Manufactured for Purchaser—Action by Vendor for Price—Evidence—Finding of Trial Judge—Appeal.*

Appeal by the defendant from the judgment of the County Court of the County of York in favour of the plaintiff for the recovery of \$492.74 and costs in an action for the price of cans to be manufactured by the plaintiff for the defendant.

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

G. A. Jarvis, for the appellant.

H. A. Newman, for the plaintiff, respondent.

HODGINS, J.A., reading the judgment of the Court, said that there was a conflict between the evidence of the respondent and the appellant as to what the bargain was. The learned trial Judge had believed the respondent as to the contract, and there were some facts which tended to confirm his version of it.

The appellant, after delivery of some of the cans, obliterated the stencilling and substituted painted words. He also, after complete delivery, expressed his willingness to take probably 400 a month of the cans to be manufactured by the respondent, though he declined to bind himself to any stated amount. The expert, Chapman, called by the appellant to condemn the cans, says, in reference to those made by the respondent and the American cans, that, "as far as the commercial proposition is concerned, the other one might do the business as well as what this one would," though he thinks they would not sell as well, because the American cans were of much finer finish.

*Appeal dismissed with costs.*