

# MONTHLY LAW DIGEST AND REPORTER.

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ACCEPTANCE OF CONTRACT BY CORRESPONDENCE—See Contracts 4.

ACCIDENT INSURANCE—See Insurance, Accident.

ACCOMMODATION ENDORSER—See Bills and Notes 1.

ACQUIESCENCE IN JUDGMENT—See Appeals 1. 2.

## **ACTION FOR GOODS SOLD AND DELIVERED.**

### **EVIDENCE.**

To an action for goods sold and delivered the defendant pleaded that the goods were sold, if at all, to the defendant by the Minudie Mining and Transportation Company; that the plaintiff received from the company drafts accepted by them in payment for the goods; that he subsequently recovered judgment against the company for the price of the goods; and that the defendant, believing the goods to have been sold by the plaintiff to the company and by the company to him, paid the company for them.

The evidence showed that the goods were ordered by the defendant, through his agent C., and were charged, sent to, received by, and used by him. There was a written order for the goods in the defendant's own writing, which was filled by plaintiff in the ordinary course of business. The defendant's agent C. was also agent of the company, and as such ordered goods on their account from the plaintiff and others. He informed the plaintiff that the company would pay the defendant's bill, and, acting on the information, the plaintiff included the amount of the bill in a draft on the company. The draft having been refused by the company, the plaintiff wrote a letter claiming that his account was against the company only, and that the goods were

purchased by the company's agent for the company.

On the issues raised on these facts, judgment was given in the County Court in favour of the defendant.

On appeal the judgment was reversed with costs. *Peters v. Seaman*, Supreme Ct. Nova Scotia, May 1892.

ACTION TO ACCOUNT—See Substitution.

## **ADJOINING LAND-OWNERS.**

EXCAVATIONS—RELATION OF MASTER AND SERVANT—INDEPENDENT CONTRACTORS.

(1) A person who is told by an adjoining land-owner that a proposed excavation for a building would be made in the usual way by removing the dirt "in sections," and walling up one section before another was opened, is entitled to rely upon such representations, at least until a reasonable opportunity has been given him to take measures for the protection of his building; and where, after one section has been built substantially as promised, the removal in sections is abandoned, and the dirt is all taken out at once, thereby occasioning the fall of the said building only a few hours afterwards, it cannot be said as a matter of law that such opportunity was given.

(2) The fact that the removal of earth in sections for the foundation of a building involves some additional expense, and lessens in some slight degree the strength of the foundation wall, but not to such an extent as to impair its utility, does not excuse the failure to remove the earth in this manner, where it is necessary for the safety of an adjoining building.

(3) A company which contracts for an excavation for the foundation of a building, to be made as the company's