

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

NOVEMBER 23RD, 1917.

*OGILVIE FLOUR MILLS CO. LIMITED v. MORROW
CEREAL CO.

Contract—Formation of—Purchase and Sale of Flour—Oral Agreement—Confirmation—Evidence—Offer—Letters—Telegrams—Findings of Trial Judge—Appeal—Statute of Frauds—Damages for Breach—Excessive Assessment by Trial Judge—Reference for Fresh Assessment.

Appeal by the defendants from the judgment of LATCHFORD, J., at the trial, in favour of the plaintiffs for the recovery of \$12,700 in an action for damages for breach of an agreement to deliver a quantity of flour.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

Harcourt Ferguson, for the appellants.

W. N. Tilley, K.C., for the plaintiffs, respondents.

RIDDELL, J., read a judgment in which he said that (according to the plaintiffs' version of the facts) one Weeks, the general sales-agent of the plaintiffs, met Morrow, the defendants' manager (in reality the defendant), on the 12th October, 1916, in Montreal, and they travelled together to Toronto the same evening. Weeks wanted 20,000 bags of flour, and some negotiations took place between them. Weeks offered to buy 10,000 bags at \$7.05 and another 10,000 bags at \$7. Morrow was willing to sell at \$7.05, but not quite satisfied to sell the extra 10,000 at \$7. Before Weeks went on to London, Morrow getting off at Toronto, it was arranged that Morrow was to "confirm" the sale of 10,000 bags at \$7.05, i.e., telegraph whether he would accept the offer of Weeks to buy 10,000 at \$7.05; and that, later on, he was to let Weeks know about the 10,000 at \$7. The same day, Morrow (in Toronto) called up Weeks (in London) by telephone and said that the 10,000 were all right, whereupon Weeks asked him to "confirm" the sale by wire. Morrow accordingly wired to Weeks: "We confirm sale six thousand bags October shipment four thousand November seven, five bulk Montreal also your

* This case and all others so marked to be reported in the Ontario Law Reports.