

The Ontario Weekly Notes

VOL. XIV.

TORONTO, AUGUST 9, 1918.

No. 21

APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

JULY 30TH, 1918.

*LE PAGE v. LAIDLAW LUMBER CO. LIMITED.

*Costs—Action for Price of Goods—Dispute as to Quantity of Goods—
Failure of Plaintiff on Main Issue—Recovery of Small Sum—
Plaintiff Ordered to Pay Defendants' Costs—Appeal—Findings
of Fact of Trial Judge.*

An appeal by the plaintiff from the judgment of MIDDLETON, J., who tried the action without a jury at Toronto, directing that the plaintiff should recover \$162.85 and should pay the defendants' costs of the action, less the sum recovered.

The action was brought to recover \$1,649.20 for 4,712 lbs. of glue at 35 cents per lb., less contra-account of \$216.55, balance \$1,432.65.

The defendants denied that they had bought this quantity of glue, alleged that they agreed to accept only sufficient glue to balance the \$216.55 which the plaintiff owed them, and that it was part of the agreement that the defendants would pay for any trifling addition "so as not to break a bag" to get the exact quantity to equal the balance.

By the appeal the plaintiff sought to recover the full sum sued for, \$1,432.65, with his costs of the action.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, SUTHERLAND, and KELLY, JJ.

I. F. Hellmuth, K.C., for the appellant.

H. J. Scott, K.C., for the defendants, respondents.

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