

In that year, taxes to the amount of about \$5,000 were remitted on account of injuries sustained by the fires of that year, and to that extent there was necessarily a deficit to that amount; but there was no deficit in the succeeding years, and so no reason or excuse for the defendants using any of the borrowed money as if for taxation losses, even if they would have had power to do so had there been any such losses.

The defendants had been throughout, in good faith, giving effect to the legislation referred to; and there was no good reason or excuse for this litigation.

The learned Chief Justice stated and negatived the contentions made in support of the appeal and of the action.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

OCTOBER 3RD, 1919.

*CATALANO & SANSONE v. CUNEO FRUIT AND
IMPORTING CO.

Sale of Goods—Contract for Supply of Fresh Fruit of Specified Size and Quality—Delivery of Fruit of Inferior Size and Quality—Action for Price—Representation and Warranty—Breach—Deduction from Contract-price—Ascertainment of Amount to be Deducted—Evidence—Allowances—Set-off—Damages—Payment into Court—Offer before Action—Costs—Appeal and Cross-appeal.

Appeal by the plaintiffs and cross-appeal by the defendants from the judgment of KELLY, J., 16 O.W.N. 109.

The appeal and cross-appeal were heard by MEREDITH, C.J.C.P., RIDDELL, LATCHFORD, and MIDDLETON, JJ.

R. S. Robertson, for the plaintiff.

D. B. Goodman, for the defendants.

RIDDELL, J., read a judgment in which he said that the plaintiffs were a firm of fruit-merchants, carrying on business in London, Ontario; the defendants were wholesale fruit-dealers, carrying on business in Toronto, who bought from the plaintiffs 700 crates of peaches in Toronto, the peaches to be of a specified size and quality. The plaintiffs sued for the price of the peaches, and the defendants set up a partial defence that the peaches were not as agreed. The trial Judge gave effect to the defendants' contention,