

for specific performance should be made, and that the appeal should be allowed.

The decision, as I have already mentioned, is based upon the construction of the contract, and not upon the ground of the exercise of the discretion of the Court. It was, however, argued that it is a case in which such discretion might well be exercised in favour of the plaintiff.

[Reference to *Lamare v. Dixon* (1873), L.R. 6 H.L. 414, 423; *Labelle v. O'Connor*, 15 O.L.R. 519, per Anglin, J., at p. 546; *Fry on Specific Performance*, 5th (Canadian) ed. (1910), p. 19; *Harris v. Robinson*, 21 S.C.R. 390, 397.]

I am unable to see that this is a case in which judicial discretion should be exercised in favour of the plaintiff.

I would allow the appeal with costs here and below.

*HILL v. RICE LEWIS & SON LIMITED.

Sale of Goods—Implied Warranty or Condition—Onus—Intention—Surrounding Circumstances—Absence of Evidence to Shew Reliance on Vendors—Breach—Damages—Remoteness.

Appeal by the plaintiff from the judgment of DENTON, JUN. Co.C.J., dismissing an action, brought in the County Court of the County of York, to recover damages for breach of an implied warranty or condition upon the sale of a box of cartridges to the plaintiff.

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

J. W. McCullough, for the plaintiff.

J. D. Montgomery, for the defendants.

MULOCK, C.J.:—This case was tried with a jury, and the learned trial Judge, after taking the opinion of the jury on certain questions, dismissed the action; and from that judgment the plaintiff appeals.

The facts are as follows. The plaintiff went to Parry Sound to hunt deer, using for such purpose a 38-40 Winchester rifle. Before going, he purchased, from the defendant company, a box of cartridges intended for his rifle. One of them proved unsuitable, being too small, and, not discovering its unfitness, the