

and that he should not be obliged to accept of any for them. The defendant also counterclaimed damages in respect of goods purchased from the plaintiff under an untrue agreement and (as alleged) not according to contract. The learned judge said that the initial difficulty was to determine what was the "sample taken by Mr. S. J. Hoag" referred to in the agreement of the 23rd January. The piece to be supplied by the plaintiff was to be "put up to" this sample. The learned judge said as a fact that the sample mentioned in the agreement was the sample taken by Hoag about the 1st October and was the sample mentioned in the first agreement. It was made up of a number of samples of unbleached piece, the produce of several different farms. The pieces were, however, to be cleaned. This term was not expressed in the contract; but it was understood by both the parties that cleaning was to be done. The piece which the plaintiff purchased from the tannery placed in the defendant's box, and sent for him at the request of Winton, was fully equal to the sample taken by Hoag. The piece agreed to be sent by the defendant was much above the market value of the piece. The defendant would some of the piece through a broker at Montreal and there were reported to require not however because they were not not clean but because as the learned judge said they were not "good better". There was no representation or undertaking by the plaintiff that these pieces should be suitable for dyeing purposes. All the pieces were cleaned within the meaning of the arrangement between Hoag and the plaintiff. The defendant's counterclaim failed and should be dismissed with costs. The plaintiff was entitled to recover the price of the piece at Winton \$3,000, with costs of action and interest and his costs of suit. If the parties should not agree as to the cost of moving piece from one storehouse to another at Winton and of the storage in the elevator there should be a reference at the defendant's expense to the Local Master. The fact that the plaintiff had been obliged to borrow money from a bank on the security of the piece stored at Winton did not prevent him from bringing this action. The defendant could not in the piece at any time by paying for them. The plaintiffs of French had no application. H. Bradford, A.C., and T. H. Wilson for the plaintiff. H. Cassels, K.C., for defendant.

DORRINGTON

Her Majesty's High Court of Justice, Chancery Division, 1911. Judgment delivered by CHURCH, J.