

deliver unless plaintiff was prepared to pay a much better price than the figures offered last season.

I think there was a contract for the delivery of 15,000 ties, and that the plaintiff should recover damages for the breach of that contract. The contract may fairly be collected from the whole terms of the correspondence. See *Bruce v. Tolton*, 4 A. R. 144; *Hussey v. Horne Payne*, 4 App. Cas. 311; *Thomson v. Mathieson*, 30 S. C. R. 357. Upon the whole case see *Fulton v. U. C. Furniture Co.*, 9 A.R. 211.

Mr. Harris was sick in the early part of the season of 1900, and died on the 24th day of June of that year. If he had not died, probably the claim would have been adjusted. The action being against the executors, it was objected that there was no corroboration of F. S. Upton's evidence. F. S. Upton is not a party to the record, but the liability, if any, is made from the correspondence, about which there is no dispute. I think the estate is liable for non-delivery of the minimum quantity as shewn by the correspondence. The deceased failed to deliver any during the fall of 1899, and by his letter of 28th March, 1900, he refused to deliver during 1900, except at a considerably higher price. That letter would warrant an assessment of damages of 8 cents each tie, but the witness for the plaintiff puts the loss at less. He says the difference in price between what these ties would have cost, and those purchased by him at Fair Haven, after duty was paid, was about 7 cents each tie. I assess the damages at \$1,000, which is a little less than 7 cents each for 15,000.

Plaintiff sued upon a contract for 100,000. He may amend, if necessary, so as to entitle him to recover on contract as found. Judgment for plaintiff for \$1,000. Defendants must pay costs. Thirty days' stay.

BRITTON, J.

JULY 7TH, 1903.

TRIAL.

GARROCH v. PURVIS.

Sale of Goods—Contract—Correspondence—Ship—Bill of Sale—Action for Price—Property Vesting—Action for Damages for not Accepting—Delay.

Action for not accepting and paying for the steam tug "Island Belle," \$150 in pursuance of an alleged contract of sale, made by correspondence between the parties.

Tried at Parry Sound, 19th May, 1903, before BRITTON, J., without a jury.

W. J. Hanna, Sarnia, for plaintiff.

R. R. McKessock, Gore Bay, for defendant.