

MCGILL CHAIRS LIMITED v. JONES BROS. & CO. LIMITED—
FALCONBRIDGE, C.J.K.B.—SEPT. 1.

Contract—Sale of Goods to be Manufactured—Action for Price—Defects—Counterclaim—Damages—Costs.—Action for the price of interiors of shell-boxes and also for the amount of a promissory note. The defendants admitted that a balance of \$1,878.90 was due to the plaintiffs, but counterclaimed for a sum in excess of that amount. The action was tried without a jury at Cornwall. The learned Chief Justice, in a written judgment, said that the defendants had an order from the Shell Committee at Ottawa to manufacture a certain number of shell-boxes. These boxes consisted of an exterior box with blocks or bridges made to fit in the interior so as to take in the shells to be conveyed overseas without rocking or jarring. A contract was finally entered into between the parties for 20,000 sets of interiors, as set forth in order No. 5103 (6th October, 1915). This order did not contain the whole contract, which was to be gathered from it and from the correspondence up to and inclusive of the letter from the plaintiffs to the defendants of the 11th October, 1915. Order No. 5103 directed the plaintiffs to ship f.o.b. Cornwall; and it was contended by the plaintiffs that the acceptance and approval of the goods should have been at Cornwall. This contention was not well-founded. In the order and in the correspondence it was provided that the blocks were to be subject to the approval of the Shell Committee inspector; that inspector would not pass upon the blocks until they had been fitted or “dropped into the boxes.” Several subsequent orders were given by the defendants to the plaintiffs, but the same remarks applied to them. A great many bridges were shipped by the plaintiffs to the defendants which were not of exact sizes according to specifications, and which were in other respects defective. A letter from the defendants to the plaintiffs of the 11th January, 1916, contained four allegations or statements of defects; these were well-founded. The only question was as to the amount of damages which ought to be recovered by the defendants. Their counsel at the trial asked for an amendment of the counterclaim so as to enable them to make a claim for damages which would overtop the plaintiffs’ claim by about \$1,000. That amendment should not be allowed until it was seen whether the parties, or either of them, would desire a reference as to damages, or would be content with the assessment now made. The Chief Justice finds that the defendants have proved damages for making necessary alterations to the bridges to the amount of the