

January, 1916, and ending on the 31st December, 1918, for use in the publication of the British Whig newspaper, published in the City of Kingston, 150 tons approximately of paper per year . . . (being the whole of the purchasers' requirements) on the following terms and conditions . . ."

Does this mean that there is a sale of 150 tons (approximately) in each of the three years? Or does it mean that the vendors agree to sell and the purchasers to take the full amount required for their paper each year?

The learned Judge adhered to what he said in *Boston Book Co. v. Canada Law Book Co. Limited* (1918), 44 O.L.R. 529, 533: "In each case the first endeavour must be to ascertain the true subject-matter of the contract." Here this was 150 tons of paper (approximately) in each of the three years, and the expression "(being the whole of the purchasers' requirements)" was merely adjectival and descriptive.

Had the agreement been to supply all that was needed by the purchasers in their business, one would expect to find this plainly stated, and the estimate would then have appeared as the subordinate and parenthetical clause.

Such was the contract in *Tancred Arrol & Co. v. Steel Co. of Scotland* (1890), 15 App. Cas. 125.

Here the words were an allegation of fact. The amount contracted for was the estimated amount which the purchasers required for their publication, but they were not words of contract.

In many cases the true subject-matter of the contract is indicated by the circumstances. Here it was more probable that the vendors of newsprint intended to sell a named quantity, and that the purchasers estimated this as their requirement, than that the purchasers had so elastic an agreement that they might take just as much or as little as they desired. The amount of paper used was under the control of the purchasers alone.

The learned Judge did not act on any such theory, but on the construction of the document only.

Under this contract the vendors delivered more than 150 tons in the first year and also in the second year. In the third year they completed 450 tons, and added 45 tons, 10 per cent., to cover any allowance called for by the word "approximately"—and then refused any further delivery under the contract.

The contract should be read as being to deliver 150 tons in each year, and any delivery beyond that, and what would be covered by "approximately," could not be applied on the delivery for the next year. Each year stood by itself; and the purchasers having in the first two years asked for more than they were entitled to, and this having been supplied and paid for at the price asked, these accounts were closed.