

apples for export, and carried on business at the town of Trenton, Ontario.

The plaintiffs alleged that in the month of October, 1903, they bought from the defendants a certain quantity of apples of a certain quality, to be delivered in New York, and that the defendants failed in the performance of their contract, so that the plaintiffs were forced to buy other apples to take the place of the ones purchased from the defendants, and in so doing suffered a loss of \$150, which they claimed as damages against the defendants.

The defendants said that they never entered into a contract to sell to the plaintiffs, as alleged by them, and, if there was any contract at all between them, then they fulfilled their part of the contract in part, by the shipment of a portion of the apples, but the plaintiffs refused to accept them, and such refusal relieved the defendants from further shipment. The defendants further said that, if there was a contract, it was subject to the term of matters in dispute being submitted to arbitration, and that therefore the Court had no jurisdiction.

W. N. Ponton, K.C., for plaintiffs.

E. G. Porter, K.C., for defendants.

DEROCHE, Co. C.J.:—The questions which are raised in this issue are: first, the question of the jurisdiction of the Court; second, was there a contract between the parties, and, if so, what were its terms? third, was there a breach of the contract on the part of the defendants? and fourth, are the plaintiffs entitled to damages, and if so, how much?

I will then first deal with the question of jurisdiction. In the bought and sold notes passed by the broker to each of the parties there is this clause, "any difference arising under this contract to be settled by arbitration," and it is upon that that the defendants are alleging that the jurisdiction of this Court is ousted. Neither of the parties, however, asked for arbitration, although the breach, if any, occurred in October, 1903, and the writ was not issued until 24th March, 1904, and no objection was taken to the action before pleadings filed, according to R. S. O. 1897 ch. 62, sec. 6, and there was no objection taken in the original pleadings; in fact, no objection taken anywhere to the jurisdiction of the Court until the trial, which was held in January, 1909,