

Where no such independent circumstances are referred to, and the engagement is to furnish goods to a certain amount, the quantity specified is material, and governs the contract. The addition of the qualifying words in such cases—when not supplemented by other words—provides only against accidental variations arising from slight and unimportant excesses or deficiencies in number, measure, or weight: *Brawley v. United States* (1877), 96 U.S. 168; *Steel Co. of Scotland v. Tancered Arrol & Co.* (1899), 26 Sc. L. Repr. 305, 314; 1 Corp. Jur. 337.

In the contracts in this case, the quantities mentioned were not estimates, and were not affected by supplemental words other than "about" and "approximate," as was the case in *Morris v. Levison* (1876), 1 C.P.D. 155, and in *Miller v. Borner & Co.*, [1900] 1 Q.B. 691.

The use of the words "about" and "approximate" was, no doubt, due to the possibility of their being a slight excess or deficiency in the quantities shipped; yet, in the case of the first contract, precisely 100 tons, out of 150 tons of shell turnings contracted for, were delivered; and, under the second contract, the quantity delivered was 175 instead of 200 tons. The total default amounted to 75 tons. Upon the shell ends and defective shells, the total delivery was $38 \frac{1}{4}$ tons, leaving a deficiency of $61 \frac{3}{4}$ tons.

In the circumstances disclosed by the evidence, the percentage allowed by the referee not only must not be increased, but must be eliminated in arriving at the amount of damages.

The defendants' appeal should be dismissed with costs and the plaintiffs' cross-appeal allowed with costs, and the damages increased by \$139.37.

As found by the referee, the defendants had not established that they suffered any damages by the refusal of the plaintiffs to accept the car of scrap steel shipped from Toronto to Hamilton—prices had so advanced that there was no loss.

FALCONBRIDGE, C.J.K.B.

NOVEMBER 8TH, 1918.

PIGGOTT v. HEDRICK.

Promissory Notes—Agreement for Renewal—Cancellation—Misrepresentation—Evidence—Immateriality—Action on Notes—Judgment.

Two actions brought to recover the amounts due upon several promissory notes.