SECOND DIVISIONAL COURT. MARCH 26TH, 1920.

WM. CROFT AND SONS LIMITED v. MESSERVEYS LIMITED.

Appeal—Question of Fact—Reversal of Judgment of Trial Judge—Consideration of Uncontradicted Facts, Documentary Evidence, and Inherent Probabilities—Sale of Goods—Agreement of Vendor to Take back and Repay Price—Evidence to Establish—Majority Judgment of Appellate Court.

Appeal by the plaintiffs from the judgment of the County Court of the County of York dismissing with costs an action to recover $820.25 for razors alleged to have been sold to the defendants.

The appeal was heard by MULOCK, C.J. EX., CLUTE, RIDDELL, SUTHERLAND, and MASTEN, JJ.

Gideon Grant, for the appellants.

George Wilkie, for the defendants, respondents.

MASTEN, J., read a judgment in which he said that the defendants denied the purchase of the razors from the plaintiff and denied any agreement to pay. The razors were imported by the defendants from Japan and sold and delivered to the plaintiffs in different lots during the year 1918. The plaintiffs paid for them in full, and no question arose until the latter part of April, 1919, when on examination the razors were found to be rusty. There was a controversy between the parties as to when the rust had originated. They could not agree. Stewart, the plaintiffs' departmental manager, stated that the defendants agreed to take back the razors and on the 1st September, 1919, to repay to the plaintiffs what they had paid for them. Messervey, the general manager of the defendant company, denied this agreement, and gave another account of what took place on the occasion mentioned by Stewart. The trial Judge preferred Messervey's account, and dismissed the action. The trial Judge arrived at the wrong conclusion, in the view of MASTEN, J., who said that, if Stewart's evidence were wholly eliminated from the record, the documentary evidence, the uncontradicted facts, and the inherent probabilities were such that he would decline to credit Messervey's evidence.

In holding that the judgment ought to be reversed, the learned Judge said, he was not in any way infringing upon the rule regarding findings of fact arrived at by the Judge who has tried the case and seen the witnesses. He referred to Dominion Trust Co. v. New York Life Insurance Co., [1919] A.C. 254, 257; Beal v.