

and continue on the railway within the township of Barton, and from the township of Barton to the terminus of the railway in Hamilton, cars with all the modern improvements for the convenience of passengers and should run cars at certain times and intervals. "Terminus," as used in para. 13, meant the terminus for which the by-law provided, not any point which the appellant company might choose to make the terminus of its railway.

These provisions were, in substance and effect, provisions for the continuous operation of the whole railway, and the appellant company by its covenant became bound to operate it.

The appeal should be dismissed with costs, and the respondent corporation should have leave to amend by alleging as an alternative claim the cause of action in respect of which it was now held entitled to recover.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

DECEMBER 26TH, 1917.

\*BRENNER v. CONSUMERS METAL CO.

*Contract—Formation—Correspondence—Sale of Goods—Offer—Acceptance—Terms and Conditions—Shipment of Part of Goods—Impossibility of Shipping Remainder—Car-shortage—Repudiation by Vendor—of Liability to Make Further Deliveries—Reasonable Time—Damages—Measure of—Difference between Contract-price and Market-price at Time of Breach and at Place of Delivery—Failure to Prove Damages—Nominal Damages—Costs.*

Appeal by the plaintiffs from the judgment of DENTON, JUN. Co. C.J., dismissing an action brought in the County Court of the County of York, and tried without a jury, in which the plaintiffs sought to recover damages for the non-delivery of four car-loads of shrapnel turnings, in breach of an alleged contract for the sale by the defendant company, which carried on business in Montreal, to the plaintiffs, who carried on business in Toronto, of five car-loads of that commodity.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

H. H. Shaver, for the appellants.

Gideon Grant, for the defendant company, respondent.