nowadays for sellers to tender instead of a policy a broker's certificate, but they also testified that the buyer was not bound to accept such a certificate; he therefore held no custom of trade could be relied on. It may be remarked that the learned Judge is careful to say that his decision does not apply to American certificates of insurance, which are in effect policies of insurance.

CONTRACT—SALE OF GOODS—BREACH OF WARRANTY—MEASURE OF DAMAGES—MITIGATION OF DAMAGES—SALE OF GOODS ACT, 1893 (56-57 Vict. c. 71) s. 53 (3)—(10-11 GEO. 5, c. 40, s. 52 (3) ONT.).

Slater v. *Hoyle* (1920) 2 K.B. 11. In this case the plaintiffs were manufacturers of cotton cloth and contracted to sell 3,000 pieces of unbleached cloth of a specified quality to the defendants. The plaintiffs had delivered and the defendants had accepted 1,625 pieces: but refused to accept any more on the ground that the pieces delivered were not according to the contract. The action was brought for damages for not accepting the balance of the goods; and the defendants counterclaimed for damages for breach of warranty in respect of the goods delivered, and also for damages for non-delivery of the balance of the goods. It appeared that the defendants had made a contract for the sale of 691 pieces of bleached cloth; and in fulfilment of that contract had used part of the cloth received from the plaintiffs and as to these pieces had sustained no loss. Grier, J., who tried the action, found that the plaintiffs had committed a breach of the contract and had repudiated their obligations under it, and dismissed the action: and on the defendants' counterclaim he held they were entitled to damages for the breach of warranty and that the measure of such damages was the difference between the market price at the time of the delivery of the goods contracted for and the goods actually delivered; and that no deduction should be made in respect of the 691 pieces, and as regards the claim for non-delivery, the market price having fallen below the contract price, no damages were recoverable. The plaintiffs appealed, but the Court of Appeal (Bankes, Warrington and Scrutton, L.JJ.). agreed with Grier, J., and with what was said by Lord Esher, M.R., in *Rodocanachi* v. *Milburn*, 18 Q.B.D. 67, 77, and approved by the House of Lords in *Williams* v. *Agnis* (1914), A.C. 570, viz., that: "It is well settled that in an action for non-delivery or non-acceptance of goods under a contract of sale the law does not take into account in estimating the damages anything that is accidental as between the plaintiff and the defendant, as for instance an intermediate contract entered into with a third party for the purchase or sale of the goods."