

CONBRIDGE, C.J.K.B., 4 O.W.N. 880, in favour of the defendants (wharfingers at Hamilton) upon their counterclaim.

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

J. Bicknell, K.C., and T. Hobson, K.C., for the appellant company.

E. F. B. Johnston, K.C., and J. G. Gauld, K.C., for the defendants, the respondents.

MEREDITH, C.J.O.:—By their counterclaim the respondents claim damages for breaches by the appellant of an agreement between the parties in respect of the following matters:—

1. Wrongfully unloading at another wharf a shipment of wire from the steamship "Regina," which resulted in a loss to the respondents of \$134.34, which they would have earned if the wire had been unloaded at their wharf.

2. Failing to unload at the respondents' wharf 6,000 tons of freight in each of the years 1911 and 1912.

3. Failure to pay one-half of the checker's wages in the years 1908, 1909, and 1910.

The learned trial Judge found in favour of the respondents as to the whole of their counterclaim, and directed a reference to the Local Master at Hamilton "to inquire, ascertain, and state what damages the defendants have sustained by reason of the matters in the defendants' counterclaim mentioned."

The evidence was very conflicting as to the terms of the contract, which both parties agreed had been entered into between them; and we are unable to say that the learned trial Judge erred in coming, as he did, to the conclusion that the evidence preponderated in favour of the respondents.

That the contracting parties met in Toronto in the spring of 1908, and there arrived at an agreement by which the respondents, who had acted as wharfingers for the appellant company in the previous year, were to be continued in that employment, on terms which were then settled, was not disputed; but there was a direct conflict of testimony as to the terms of the agreement. According to the testimony of Edward H. Browne and Edward J. Jordan, the employment was to be for five years (1908 to 1912 inclusive), and the agreement was that the appellant company was to be bound to unload at the respondents' wharf at least 6,000 tons of "freight" in each year, and was to pay one-half of the wages of the checker who was em-