

OCTOBER 5TH, 1915.

*MANNING v. CARRIQUE.

Contract—Sale of Shares—Offer to Sell—Ambiguity—Contemporaneous Interpretation by Conduct of Parties—Acceptance—Reasonable Time for Acceptance—Article of Fluctuating Nature.

Appeals by the defendant and the third parties from the judgment of the County Court of the County of York in an action to recover \$750 damages for the refusal of the defendant to deliver 50 shares of Royal Bank stock, pursuant to an alleged agreement. The judgment of the County Court was in favour of the plaintiffs for \$300 without costs, and for the defendant against the third parties for relief over or indemnity and for costs.

The appeals were heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

H. S. White, for the third parties, appellants.

T. N. Phelan, for the defendant, appellant and respondent.

A. G. Ross, for the plaintiffs, respondents.

RIDDELL, J., delivering the judgment of the Court, said that the third parties, a firm of Toronto brokers, not members of the Stock Exchange, offered the defendant 50 shares of Royal Bank stock at 202—the defendant did not accept, but said he would see and let the brokers know. Instead of accepting or rejecting the offer, the defendant wrote to the plaintiffs, a firm of broker-dealers in Montreal: "I will sell 50 shares Royal Bank at 206. Please wire if you have a buyer, on receipt hereof." The plaintiffs telegraphed at once, treating this as an offer to sell to them, and the defendant then endeavoured to accept the offer made the previous day by the third parties. They refused to supply the required stock, and the defendant did not carry out the sale to the plaintiffs.

Had the communication above set out stood by itself, it was possible that no contract of sale by the defendant to the plaintiffs could have been found, as the offer might be considered as being made to some customer of the plaintiffs to be found by them. But the offer was ambiguous; and the parties, both offerer and acceptors, in subsequent correspondence and otherwise, treated the first communication as an offer to sell to the plaintiffs. That interpretation was possible, and it should be adopted, as it was