

R. 38; Leake on Contracts, 5th ed., p. 64; Newell v. Tomlinson, L. R. 6 C. P. 405.

MAGEE, J., dissented, for reasons stated in writing, in the course of which he referred, in addition to some of the cases cited by the Chancellor and Britton, J., to Pearson v. Goschen, 33 L. J. C. P. 265; The "Canada," 13 Times L. R. 238; Harris v. Carter, 3 E. & B. 559; Magann v. Auger, 31 S. C. R. 186; Dunlop v. Higgins, 1 H. L. C. 381; Godwin v. Francis, L. R. 5 C. P. 295; Cowan v. O'Connor, 20 Q. B. D. 640; 9 Cyc. 295; Robertson v. Jackson, 2 C. B. 442; Keating v. Dillon, Q. R. 28 S. C. 323; In re Missouri S. S. Co., 42 Ch. D. 321; In re Wilhelm Schmidt, 25 L. T. 34; Meyer v. Dusser, 16 C. B. N. S. 646; Smidt v. Tiden, L. R. 9 Q. B. 446; Raffles v. Wichelhaus, 2 H. & C. 906; Keele v. Wheeler, 7 M. & G. 665; Riley v. Spotswood, 23 C. P. 318; Rossiter v. Cahlmann, 8 Ex. 361; Jones v. Giles, 10 Ex. 119, 24 L. J. Ex. 259; Hughes v. Humphreys, 3 E. & B. 958.

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DEROCHE, Co. C.J.

FEBRUARY 10TH, 1909.

COUNTY COURT OF HASTINGS.

ASPEGREN & CO. v. POLLY AND WHITE.

*Sale of Goods — Contract — Breach of — Action by Purchasers for Damages—Jurisdiction of Court—Arbitration Clause in Contract—Waiver by Parties—Making of Contract—Correspondence—Broker's Bought and Sold Notes—Terms of Contract—Car-loads of Prime Apples—Custom of Trade at Place of Delivery — Meaning of "Car-loads"—Meaning of "Prime" — Delivery of Part of Part of Goods—Refusal to Accept—Inferiority of Quality — Evidence — Deficiency in Quantity — Vendors not Shipping Second Car-load—Damages—Purchase to Fill Contract — Difference between Contract and Market Prices.*

The plaintiffs are dealers in produce and members of the Produce Exchange of New York, and carried on business in the city of New York, and the defendants were manufacturers of evaporated apples, dealers in dried apples and