

defendants refused part of the goods, which were shipped from Spain, and were late in arriving. By order given the plaintiff was to import and ship to the defendants at Toronto "about February, from Montreal," the goods in question.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and MIDDLETON, JJ.

A. McLean Macdonell, K.C., for the defendants.

T. P. Galt, K.C., for the plaintiff.

The judgment of the Court was delivered by MIDDLETON, J., who, after setting out the facts, said:—

Three defences are set up: (1) the order did not contemplate shipment in instalments; (2) the goods were not shipped in time; (3) the remedy is damages for refusal to accept, not an action for the price.

(1) The first defence is not well founded. The plaintiff was to purchase, import, and forward the goods. This he did, and the fact that some packages were sent forward earlier than others was no breach of the contract. There was no stipulation in the contract upon the subject, and none can be implied. The plaintiff acted reasonably in forwarding the goods as early as possible, even if the entire order had not then come to hand.

(2) "About" is a relative and ambiguous term, the meaning of which is affected by circumstances, and evidence may be received to shew the intention of the parties in the light of surrounding circumstances: *Harten v. Loeffler*, 212 U. S. 397. The correspondence prior to the contract in this case supplies the necessary explanation, and shews that what the parties meant was that the plaintiff should at once forward the order to Spain, so that the goods might reach Montreal for shipment to Toronto in February, or as near thereto in point of time as possible. Time was not of the essence of the contract, but was not immaterial; and the word "about" was used to give some latitude and to allow for the contingencies of the voyage and land transit to Montreal. February was not meant to be the limit, but "about" gave a margin of delay beyond that month: *Sanders v. Munson*, 17 Fed. R. 649.

The cancellation of the contract was premature and unauthorized.

(3) The contract was not simply a sale of goods by a merchant to a customer.

The defendants authorised the plaintiff to import and ship to him the goods in question, and agreed to pay the price. By refusing to accept the goods which had been shipped in accordance with