

LATCHFORD, J.

NOVEMBER 7TH, 1918.

*SUSMAN v. BAKER.

Contract—Sale and Delivery of Goods—Breach—Delivery of Smaller Quantities than those Contracted for—"About"—"Approximate"—Percentage Allowance—Damages—Mistake in Wording of Written Contract—Finding of Referee—Appeal.

An appeal by the defendants and a cross-appeal by the plaintiffs from the report of a referee, upon a reference directed by the judgment in the action, to ascertain the plaintiffs' damages upon breaches of contracts for the sale and delivery of goods.

The appeal and cross-appeal were heard in the Weekly Court, Ottawa.

G. D. Kelley, for the defendants.

A. B. Cunningham, for the plaintiffs.

LATCHFORD, J., in a written judgment, said that the contract of the 20th October, 1916, was for "about" 150 tons of shell steel turnings at \$6.25 a gross ton f.o.b. Hamilton. The second contract, 31st October, 1916, was for "approximate quantities" of "200 tons steel shell turnings at \$3.60 per gross ton and 100 tons shell ends and defective shells at \$12.75 per gross ton all f.o.b. Renfrew."

It was contended by the defendants that "200" in the second contract was inserted by mistake. The referee discredited the evidence adduced by the defendants in this regard; and the appellate tribunal should not interfere: *Wood v. Haines* (1917), 38 O.L.R. 583, 586 (P.C.); *Morrow Cereal Co. v. Ogilvie Flour Mills Co. Limited*, a recent decision of the Supreme Court of Canada, not yet reported, restoring the decision of the trial Judge, which was but in part affirmed by the Appellate Division, *Ogilvie Flour Mills Co. Limited v. Morrow Cereal Co.* (1917), 41 O.L.R. 58.

In ascertaining the meaning of the words "about" and "approximate," and determining whether the allowance of 5 per cent. off the quantities specified should not be made, as was contended by the plaintiffs, or was too low, as contended by the defendants, the fact must be regarded that in neither case was the sale made a sale of a bulk lot of scrap with an estimate of the probable quantity.