

defendant to set up by way of diminution of the price the amount by which the goods were less valuable by reason of the breach of contract: *Catalano & Sansone v. Cuneo Fruit and Importing Co.* (1919), ante 60, 46 O.L.R. 160.

But the affidavit which sets up this defence must shew what reduction is claimed in respect to the quality of the goods: *Carter v. Hicks* (1915), 33 O.L.R. 149, and, on that authority, the affidavit must be held insufficient.

That, however, is an irregularity only, which can be cured; the plaintiffs had taken a very important step with knowledge of the irregularity—they had examined on the affidavit which, they now contended, was wholly insufficient—and they could not be allowed now to set up this irregularity.

The defendants must, however, file and serve an affidavit setting out the amount of deduction claimed by them.

Upon the defendants filing and serving the affidavit, the appeal should be dismissed, without costs.

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RIDDELL, J.

NOVEMBER 27TH, 1919.

RE BROWN AND McMASTER.

*Will—Construction—Devise of Land—Executors—Estate pur autre Vie—Equitable Vested Remainder in Fee—Trustees—Remaindermen—Title to Land—Vendor and Purchaser.*

Motion by a vendor of land for an order, under the Vendors and Purchasers Act, declaring the purchaser's objections to the title invalid, and that the vendor could give a good title.

J. Hales, for the vendor.

C. B. Henderson, for the purchaser.

RIDDELL, J., in a written judgment, said that S.C., by his will, after certain devises and bequests, directed his executors "to retain all the residue and remainder of my estate real and personal . . . for and during the . . . life of my said wife and pay to her the income . . . upon the death of my said wife to . . . convey to C.P.A. houses numbered 775, 777, and 779 . . . with land thereunto appertaining . . ." These houses and the land were part of the residue. C.P.A. had sold the lots, the widow still living; the widow joined in the conveyance with C.P.A. and the executors.