

In this case, the cargo agreed to be provided approximated 800 tons. The nine cargoes carried by the plaintiff for the defendants in 1914, in his old vessel of 400 tons' capacity, averaged 388 tons each, and both parties recognised such an average tonnage as constituting a cargo for the old boat. Upon the same scale, a cargo of 776 tons would have been a compliance with the contract made in 1915. The defendants were able to load only 383 tons. They should have loaded 393 tons additional, for which the plaintiff would be entitled to claim \$786 in addition to what he had received.

Judgment for the plaintiff for \$786 damages with costs.

SUTHERLAND, J.

FEBRUARY 13TH, 1917.

MORTIMER CO. LIMITED v. DOMINION SUSPENDER CO. LIMITED.

Contract—Furnishing Work and Material—Breach—Delay—Right to Repudiate—Measure of Damages—Deduction from Contract Price of Sum to be Expended in Completion—Anticipated Loss on Contract to be Compensated by Advertising Benefit—Element in Assessment.

Action for damages for breach of an agreement embodied in correspondence between the plaintiffs and defendants in March, 1915. The plaintiffs agreed to print for the defendants 3,500 catalogues from copy and material supplied by the defendants, in accordance with specifications, at a price of \$1,200, subject to an addition to the price in the event of changes. The defendants furnished some of the copy and material, and the plaintiffs had it set up and did work upon it. The alleged breach was the failure of the defendants to supply the rest of the material so as to enable the plaintiffs to complete their work. The action was begun on the 26th October, 1916.

The action was tried without a jury at Ottawa.
R. G. Code, K.C., for the plaintiffs.
R. S. Robertson, for the defendants.

SUTHERLAND, J., set out the facts and the correspondence in a written judgment, and said that it was clear that the defendants had made up their minds not to have the catalogue completed