

FERGUSON, J.A., in a written judgment, said that by the judgment appealed against it was directed that the plaintiff should recover against the defendant \$1,737.80 as damages for breach of a contract for the purchase and sale of flour.

This case was tried with *Sierichs v. Hughes*, ante, and in appeal the two cases were heard together. Hughes was the defendant in both actions, and the facts and circumstances and the agreement in this case did not materially differ from those in the *Sierichs* case, except that in this case the plaintiff agreed to purchase and the defendant agreed to sell two kinds of flour, instead of one, from which it should be plain that the obligation was on the plaintiff to specify his requirements before the defendant was called upon to make delivery, and except that the document in this case was on its face incomplete, thereby necessitating the taking of evidence to explain its meaning and to arrive at the true contention of the parties.

The contract read: "Bought of L. P. Hughes, Dealer in Flour and Feed etc. Terms Cash. Belleville, Oct. 14, 1915. Mr. J. L. Gerow. 1,000 bags Rose...\$2.70. 1,000 bags Queen...\$2.45. Delivered as required up to Nov. 1, 1916. 35 bags week." This was signed by both parties.

The learned Judge of Appeal was of opinion that this document must be read to mean that the flour was to be delivered as required in instalments of about 35 bags per week, and that it was incumbent upon the plaintiff to specify his requirements and accept delivery in instalments of about 35 bags a week, so as to receive and accept by such instalment demands the whole 2,000 bags before the 1st November, 1916; that he failed to prove such specifications and requests and thereby his readiness and willingness to accept and receive the flour at the times and in the manner specified in the contract; that, as in the *Sierichs* case, the times and manner of specifying and requesting and accepting delivery were of the essence of the contract; that the plaintiff was not entitled, under the words of the contract itself, to ask or demand delivery at any other time or in any other manner; and that, the plaintiff not having attempted to prove any variation of the contract or request by the defendant to forbear, except in so far as that might be inferred from silence (*Doner v. Western Canada Flour Mills Co. Limited* (1917), 13 O.W.N. 328), his action failed.

The appeal should be allowed with costs, and the action dismissed with costs.

MACLAREN, J.A., and SUTHERLAND, J., agreed with FERGUSON, J.A.