

Jas. Haverson, K.C., for plaintiffs.

Britton Osler, for defendants.

HON. MR. JUSTICE MIDDLETON:—The defendants, the owners of a machine known as a Brown hoist, having completed the work for which they required it, offered it for sale. Plaintiffs desired such a machine, and negotiations took place, resulting in a verbal offer of \$4,800. Throughout the course of these negotiations it was thoroughly understood that the purchasers were to take delivery of the machine where it stood, and themselves to load it upon the railroad cars for removal to their own works. McLeod desired to communicate with his partner as to the acceptance of this offer. On the 15th April he wrote the letter of that date, declining to accept \$4,800, and stating readiness to accept “five thousand dollars for the machine in place.” On the same day the plaintiffs wrote a letter as follows:—

“We accept your fifteen-ton four-wheel Brown machine at the price you name in your letter of to-day now before me, viz., \$5,000 in place, which means, we presume, on car. We will advise you in a day or two how we want it shipped.”

The defendant McLeod, regarding his offer as meaning five thousand dollars for the machine as it stood where it was, and regarding the letter of April 15th as a departure from the terms of that offer and as an attempt to impose upon the vendors the duty of placing the machine upon the cars, interviewed the plaintiffs, pointing out that the letter was not a satisfactory acceptance of the offer, as it purported to add this new term. Some discussion took place with Mr. Godson, during which he intimated that he was ready to pay the five thousand dollars and that his company would itself load the machine; but when Mr. McLeod asked to have this put in writing, the company declined to give any further written document, contending that the letter was an adequate acceptance of the offer. Thereupon McLeod sold the machine to another purchaser.

I do not think that the letter in question constitutes an acceptance of the offer. I take the view that it was a deliberate attempt to engraft upon McLeod's letter a meaning which Godson well understood it did not bear, and that the refusal to clear the matter up by giving an unqualified acceptance indicated a desire to leave McLeod in a position which would be embarrassing and would leave it open to