

[Reference to *In re Doolittle v. Electrical Maintenance and Construction Co.*, 3 O. L. R. 460, 1 O. W. R. 202; *Taylor v. Reid*, 8 O. W. R. 623, 763.]

Taking plaintiff's affidavit, he does not pretend that the goods became the goods of defendant at Ingersoll, or that the goods need not be received by defendant before liability attaches to defendant for the price. Prima facie, delivery of the goods must be made at the time or before the money the price thereof is payable, and I see nothing to indicate that defendant here could not traverse the delivery to him. Such delivery would, of course, in the absence of some special agreement such as is not indicated here, be outside of the jurisdiction of the Oxford Court.

The case is not like *Re Noble v. Cline*, 18 O. R. 33. . . .

The action should, therefore, not have been brought in that Court, and plaintiff will pay the costs.

JULY 11TH, 1907.

DIVISIONAL COURT.

HOUSE v. BROWN.

Contract—Sale of Goods—Provisions as to Payment of Price—Deferred Payments to be Agreed upon Subsequently—Incomplete Contract—Vendor not Entitled to Enforce—Purchaser Taking Possession of Goods to Test and Returning Same—Dismissal of Action—Costs.

Appeal by defendant from judgment of MORGAN, Jun. J. of County Court of York, in favour of plaintiff for the recovery of \$145, the price of a "House cold tire setter," awarded as damages for breach of contract to purchase the same.

F. M. Field, Cobourg, for defendant.

F. E. Hodgins, K. C., for plaintiff.

The judgment of the Court (MEREDITH, C.J., TEETZEL, J., ANGLIN, J.), was delivered by

ANGLIN, J.:—The contract between the parties bearing date 7th April, 1906, is in the following terms: