

THE

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NOVA SCOTIA.

COUNTY COURT, DISTRICT NO. 2.

NOVEMBER 12TH, 1910.

JAMES A. LANGILLE v. NOAH ZINCK

Sale of Goods—Evidence—Jurisdiction of Magistrate.

An appeal from Magistrate's Court.

D. F. Matheson, K.C., for plaintiff.

J. A. McLean, K.C., and J. W. Margeson, for defendant.

FORBES, Co.C.J.:—This action came into this Court by appeal from a judgment in the plaintiff's favour for \$3 and costs in the Magistrate's Court.

On the trial the plaintiff gave evidence and swore he sold the defendant an ox waggon as follows: "I said Noah, do you want a tongue, and he said no, I got no use for a tongue as I have no oxen, but a horse, and I said I would not sell it for less than \$10 without a tongue, and with a tongue \$15, but he paid me \$10 then and there for waggon. He took hind part of waggon away and left fore part in my shop till spring, by an agreement with me. In the spring I missed the waggon tongue. In May I went to defendant and asked why he took the tongue out of my shop as I did not sell it to him, and he said I know I did not buy any tongue, but the tongue goes with the waggon. It was objected at the time of sale that I was not selling the tongue as he had no use for it."

Defendant called no witnesses and on this state of facts, the tongue, which is the subject of this suit, was never sold