

the pears for a reasonable time until another car-load for Vancouver should be ready for shipment. They add that, owing to difficulties in the printing trade, they could not get labels for canned pears, and therefore could not ship them. They do not appear to have been ready to ship the pears until about 7th October, before which time defendants had definitely refused to accept any of the goods.

Defendants maintain that there was no contract because of a mistake of the telegraph company in transmitting their order, by which the words, "three hundred tomatoes three fifty lombard plums," in the despatch handed by them to the Canadian Pacific Railway Company were converted, in the transcript delivered by that company to plaintiffs, into "three hundred tomatoes three fifty lombard plums," resulting in their being sent seven times the quantity of plums they intended to order. They also maintain that the failure to deliver the pears ordered entitled them to reject the rest of the goods shipped.

Plaintiffs, on the other hand, contend that the Canadian Pacific Railway Company were agents of defendants in transmitting the message of 29th August; that, as against defendants, therefore, plaintiffs were and are entitled to treat the transcript delivered to them, and admitted in evidence without objection, as the order of plaintiffs; that there is no admissible evidence to prove any other order or any mistake in the transmission of the telegram, because the original despatch delivered by defendants to the Canadian Pacific Railway Company in Vancouver has not been produced, and, its loss or destruction not being proved, the secondary evidence of its contents taken on commission is inadmissible; that plaintiffs' acceptance of the order contained in the despatch as delivered to them constituted a binding contract; and that the non-delivery of the pears with the rest of the order did not, in the circumstances, justify defendants' refusal to accept the carload shipped to them.

The burden of proving a contract and performance of their part of that contract rests upon plaintiffs. If, as is contended by defendants, because of the request of plaintiffs that defendants should order by wire and at plaintiffs' expense, the Canadian Pacific Railway Company in transmitting the message of 29th August were in reality the agents of plaintiffs, there would be little, if any, weight in the contention that defendants were bound by the incorrectly trans-