MEREDITH, C.J.O., concurred, for reasons briefly stated in writing.

MACLAREN and MAGEE, JJ.A., also concurred.

HODGINS, J.A., was of opinion, for reasons stated in writing, that the proper conclusion of fact was, that the defendant company, voluntarily or knowingly, by reason of compulsion caused by having resold, accepted the lumber with an excess of No. 1 common, though without realising the amount of that excess; and the legal result was the same as if the company was unaware of it: Poulton v. Lattimore (1829), 9 B. & C. 259; Wallis Son & Wells v. Pratt & Haynes, [1910] 2 K.B. 1003, [1911] A.C. 394. The appellant company "voluntarily" precluded itself from the remedy of rejection—"elected" to treat the breach of condition as a breach of warranty; and, having done so, could not reject, and is entitled to sue for damages as for a breach of warranty. The respondent knew, but did not disclose, the true state of affairs, and cannot complain if the law requires him to fulfil his contract. The respondent was bound to submit to "national inspection." The lumber was originally to contain 80 per cent. of first and seconds and 20 per cent. of No. 1 common, and the only modification was that the appellant company was to have those quantities reduced by $7\frac{1}{2}$ per cent. of No. 2 common.

Appeal dismissed; HODGINS, J.A., *dissenting.*

FIRST DIVISIONAL COURT. JANUARY 10TH, 1916.

*TRAVATO v. DOMINION CANNERS LIMITED.

Writ of Summons—Failure to Serve—Negligence of Solicitor—Renewal after Expiry of Year—Workmen's Compensation for Injuries Act, sec. 9—Revival of Action after Statutory Bar—Claim at Common Law—Right to Bring New Action for.

Appeal by the plaintiff from the order of CLUTE, J., ante 15.

The appeal was heard by MEREDITH, C.J.O., GARROW, MACLAREN, MAGEE, and HODGINS, JJ.A.

*This case and all others so marked to be reported in the Ontario Law Reports.