

The only thing against these letters and this conduct is the statement of the vendor that over the telephone Mitchell refused to accept the apples on 6th December.

The brother of the vendor, who heard what was said by the vendor through the telephone to Mitchell, thus reports it . . . my brother answered; "It is very cold; take the car in and examine the fruit, report how many barrels No. 2 in car, and write down your best offer on car;" and on cross-examination this, "Take the car—examine it—see how many No. 2 apples are in car—and make us your best offer." The vendor says that his manager was "to take the apples into store" or "get it stored somewhere." He now interprets this to mean a new bargain and storage on that footing. But the brother does not corroborate about taking into store. What he reports is consistent with the sale going on subject to diminution as to price because of alleged inferior quality of some apples.

The conduct and letters turn the scale against the vendor, and judgment should be reversed, and entered for the appellant with costs.

I think an appeal is open on this interpleader. The order as drawn imports only a consent to a summary disposition of the claim, not a consent to its being tried before the Judge of the County Court as *persona designata*. The proceedings are all in the High Court, and both parties by their correspondence contemplated and recognized a right of appeal from the Judge's decision, under Rule 1110.

JUNE 22ND, 1903.

REX v. MEYERS.

Municipal Corporations By-law—Transient Traders—Conviction—Residence of less than Three Months—Penalty—Apportionment—Costs—Distress—Imprisonment—Uncertainty—Amenament—"Butcher"—Municipal Act - Divisions and Headings.

Motion by defendant to make absolute a rule nisi to quash his conviction under a transient traders' by-law of the village of Stouffville.

J. W. McCullough, for defendant.

W. E. Middleton and C. R. Fitch, Stouffville, for the magistrate and prosecutor.

The judgment of the Court (BOYD, C., FERGUSON, J., MACMAHON, J.) was delivered by

BOYD, C.—This conviction is against a transient trader occupying premises in the village, who, not being entered on