

per 1,000 c.f., the amount would be \$2,967.92. This amount should be allowed.

The total damages will be \$54,031.82 as follows:—

Gas for making lime .....	\$26,584 80
Gas for keeping lime and kilns hot.	2,967 92
Gas for operating other plant ....	24,479 10

---

\$54,031 82 . . .

As to plaintiffs' appeal against the Erie County Natural Gas and Fuel Co., no notice had been given prior to the hearing, and indulgence was granted; so this appeal should be allowed without costs.

The defendants have succeeded in part—only as to amount allowed—a large amount—but, as they failed upon many objections put forward, there should be no costs of their appeal.

Appeal of defendants allowed as to amount, and the damages in favour of plaintiffs assessed at \$54,031.82.

---

FALCONBRIDGE, C.J.

DECEMBER 9TH, 1907.

TRIAL.

### FREEMAN v. COOPER.

*Sale of Goods—Action for Price—Warranty—Failure to Establish—Onus—Evidence—Course of Dealing.*

Action to recover a balance of \$2,454.08, alleged to be due and payable by the defendant to the plaintiffs as the price of goods sold and delivered by plaintiffs to defendant. Defendant paid into Court \$226.26, and alleged that the plaintiffs warranted certain cement to be first-class No. 1 in quality, and represented to the defendant that the cement was equal to the best brands of cement on the market; and on that representation induced the defendant to purchase the cement, but that the cement was not of the description or quality warranted but was of an inferior description and quality, whereby defendant sustained great damage.

G. H. Watson, K.C., and J. W. Nesbitt, K.C., for plaintiffs.

Lyman Lee, Hamilton, and J. G. Farmer, Hamilton, for defendant.

FALCONBRIDGE, C.J.:—The defendant failed to satisfy the onus cast upon him of establishing any express warranty.