

But if the position taken by the appellant was, that it would make no deliveries under the later contract until the dispute as to the earlier one was settled, that was such a repudiation of the appellant's obligation under the later contract as warranted the respondent in rescinding.

On the question of what is a repudiation, reference to *In re Rubel Bronze and Metal Co. and Vos*, [1918] 1 K.B. 315, 322; *Metropolitan Water Board v. Dick Kerr and Co. Limited*, [1918] A.C. 119.

What the appellant proposed was to substitute for its obligation under the contract an entirely different obligation—one which would enable the appellant to delay for an indefinite period the delivery of the iron, all of which it had contracted to deliver before the 30th June, 1917. That was such a repudiation of its obligation as to warrant the respondent in rescinding.

As to damages, the learned Chief Justice saw no reason to differ from the trial Judge; and was inclined to think that, as what the appellant had agreed to sell was Hamilton pig-iron, and the market price of it was \$39, the respondent was entitled to recover the difference between that price and the selling price, even if other iron which would answer the same purpose could be bought at \$34.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

JULY 15TH, 1918.

*MAGILL v. TOWNSHIP OF MOORE.

Negligence—Obstruction or Nuisance in Highway—Telephone Wires Strung too Low—Proximate Cause of Accident Occasioning Death of Person Lawfully Passing under Wires—Liability of Township Corporation—Contributory Negligence—Evidence—Findings of Trial Judge—Appeal.

Appeal by the defendants from the judgment of CLUTE, J., 13 O.W.N. 318, 41 O.L.R. 375.

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

R. I. Towers and A. Weir, for the appellants.

J. R. Logan, for the plaintiffs, respondents.