

SUPREME COURT OF ONTARIO.

2ND APPELLATE DIVISION.

MAY 16TH, 1913.

WARREN, GZOWSKI & CO. v. FORST & CO.

4 O. W. N. 1284.

Broker—Balance due by Customer — Counterclaim—Alleged Conversion—Purchase on 90-day "Spread"—Tender—Few Minutes Late—Refusal—Reasonableness—Custom—Rules of Exchange—Application—Evidence.

Action by brokers, members of the Toronto Stock Exchange, against other brokers, non-members of the exchange, to recover \$2,082, balance due upon certain stock alleged to have been purchased by them for defendants, which the latter refused to accept when tendered. Defendants counterclaimed for \$10,000 damages for alleged conversion of the stock in question. The facts were in dispute, but appeared to shew that defendants had purchased the stock in question upon a 90-day buyer's option, called a "spread," under which the buyers had to accept delivery at the expiry of 90 days, but could call for delivery at any time within that period by giving due notice. This notice, according to the custom of the exchange and of brokers generally, is a 24-hour notice. There was dispute as to when the notice was given, but defendants claimed that the time expired at 3 o'clock on a certain day, and as plaintiffs could not deliver at that time, refused to take delivery thereafter. Plaintiffs had the stock for delivery a few minutes after 3 p.m. on the day in question (being late through the delay of a messenger), and tendered same, but defendants refused to accept it.

MIDDLETON, J., 23 O. W. R. 901; 4 O. W. N. 770, found the facts in favour of plaintiffs, that the tender was made in a reasonable time, and that the refusal of defendants to accept was unreasonable, having regard either to the nature of the transaction or the terms of the contract between the parties, as defendants had suffered no loss, the exchange being closed at 3 p.m. until the following day.

Judgment for plaintiffs for \$2,082 and counterclaim, dismissed, both with costs.

SUP. CT. ONT. (2nd App. Div.) affirmed above judgment.

An appeal by the defendants from a judgment of Hon. Mr. Justice Middleton, 23 O. W. R. 901.

The appeal to the Supreme Court of Ontario (Second Appellate Division) was heard by HON. SIR WM. MULOCK, C.J. EX., HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, and HON. MR. JUSTICE LEITCH.

I. F. Hellmuth, K.C., and A. McLean Macdonell, K.C., for the defendants.

F. Arnoldi, K.C., and D. D. Grierson, for the defendants.

THEIR LORDSHIPS (V.V.), dismissed the appeal with costs.