

goods shall comply with the description. It is not a mere warranty "in the narrower sense of the term." The burden of proof was on the plaintiffs to shew that they had furnished goods such as contracted for, and I think they have failed to do so.

The appeal must therefore, I think, be allowed with costs and the action dismissed.

LONGLEY, J., concurred.

DRYSDALE, J.:—The plaintiffs contracted to deliver to the defendants at Sydney, thirty tons best selected round French pebbles for tube mills. The goods were forwarded to Sydney and when examined were alleged by defendants not to be of the class or quality ordered, and were rejected. I think the sampling was done in a fair and businesslike manner and the question to be passed upon was whether the plaintiffs have sent best selected round French pebbles as contracted for. The defendants say no, that the goods sent were of such an inferior quality that not more than 20 or 30 per cent. could be said to be of the class contracted for. If this were true the defendants were right in rejecting them. When I examine the learned trial Judge's finding I do not find anything explicit on the point. He says:—"That the most that can be said is that of the small number of bags examined the pebbles were inferior but not wholly useless; that the defence is that of some ten or fifteen bags of the 600 only about 20 or 30 per cent. of the pebbles are usable or of good quality, according to those who examined them, and that he is unable to accept this as a satisfactory reason for rejecting the whole shipment."

If the samples were fairly taken and fairly represented the lot, and after examining the evidence relating to the sampling I see no reason to doubt it, and this can be considered as a statement that the defendants could not as of right reject the shipment on discovering that only about 20 or 30 per cent. of the pebbles were usable or of good quality, I cannot agree with the learned trial Judge.

The plaintiffs were bound to send goods that answered the description contracted for, and if they forwarded goods of an inferior quality which cannot reasonably be said to be "best, selected, round, French pebbles for tube mills" the defendants were right in rejecting them.