

SECOND DIVISIONAL COURT.

MARCH 1ST, 1918.

*DOMINION PAPER BOX CO. LIMITED v. CROWN
TAILORING CO. LIMITED.

Sale of Goods—Unfitness for Purpose Intended—Return of Part of Goods only—Misrepresentation by Vendor's Agent—Right to Repudiate Whole Contract—Loss of Right by Retention of Part of Goods—Warranty or Condition of Fitness—Breach—Right to Reject Part—General Damages—Special Damage—Damages in Respect of Quality of Goods Used or Retained—Appeal—Cross-appeal—Costs.

Appeal by the plaintiffs and cross-appeal by the defendants from the judgment of the County Court of the County of York.

The appeal and cross-appeal were heard by MACLAREN, J.A., LENNOX, J., FERGUSON, J.A., and ROSE, J.

M. H. Ludwig, K.C., for the plaintiffs.

R. D. Moorhead, for the defendants.

ROSE, J., read a judgment in which he said that the defendants ordered from the plaintiffs 19,000 paper boxes; the plaintiffs made and delivered to the defendants 8,500 boxes. The defendants used some of these; but, finding that they were not strong enough, returned to the plaintiffs what remained on hand, except so many as the defendants thought they would need pending delivery to them of boxes ordered from another maker, at the same time sending to the plaintiffs a cheque for the price, as they computed it, of the boxes used or retained. The plaintiffs refused to accept the cheque or to acknowledge the defendants' right to reject the boxes, and sued in the County Court for the price of the boxes delivered and for damages for breach of contract. The defendants, besides denying that the boxes delivered were such as they were bound to accept, alleged that they had suffered loss by reason of the plaintiffs' breach of contract to deliver boxes fit for the purposes for which the boxes were intended; and, although they did not put upon the record a formal counterclaim for such damages, they gave evidence in support of their allegation, and at the trial asked leave to amend by adding a counterclaim. The leave was not expressly granted or refused, and the motion was renewed before this Court.

At the trial, judgment was given in favour of the plaintiffs for \$105 and costs.