

by the term "No. 9," and that "coarser" meant the grades of wire, such as 8 and 7, drawn coarser or thicker than 9.

It appeared from the evidence that it is difficult to manufacture wire with such nicety and exactness as to keep to the perfect standard under a particular number, and that slight variations are not easily avoided.

Upon the argument of the appeal, the Court was asked to construe the contract so as to determine one point, whether the plaintiffs could insist, as they did, that they could call for No. 9 within the limits between .140 and .144, or whether the defendants had the right, provided they kept within the limits between .140 and .148, to supply wire as No. 9, even if it ran between .144 and .148.

So long as the defendants supplied wire of a diameter between .140 and .148, the plaintiffs could not demand that what should be sent to them should be in effect what was known in the trade as "No. 9 scant," that is to say, between .140 and .144.

The appeal of the defendants should therefore be allowed upon the question of the proper construction to be placed on the word "specify."

The counterclaim should be dismissed; the cross-appeal should be dismissed; and the plaintiffs' judgment for the small claim of \$162.52 should stand.

There should be no costs for or against either party of the action or appeal.

MULOCK, C.J. Ex., and KELLY, J., agreed with SUTHERLAND, J.,

RIDDELL, J., agreed in the result, for reasons stated in writing. He said that the real dispute was this: the plaintiffs took the position that they might select from what was recognised as gauge No. 9, wire exactly gauge No. 9 and finer, i.e., from .144 to .140 of an inch in diameter; while the defendants maintained that the plaintiffs could specify only the gauge—No. 9, No. 8, No. 7—but could not call upon the defendants to furnish only the finer grade of No. 9. The plaintiffs' claim was unfounded. If the exact words and their exact meaning were taken, the plaintiffs had no right to any wire under .144 at all—that being exact gauge No. 9. But, assuming that No. 9 meant from .140 to .148, their case was not advanced; they might specify No. 9 or any coarser gauge—such as No. 8—but there was no power to break up a gauge and call for wire of a particular diameter or diameters within the gauge, excluding all other diameters.

LATCHFORD, J., agreed with RIDDELL, J.

Judgment below varied.