

Plaintiff did not need the stock until 21st September, when he wrote asking defendant how soon he could ship to fill his order for the 3 cars. Defendant on the following day replied, "Am trying to get you off a car this week." . . . The car of stock not having arrived, plaintiff on 5th October asked defendant over the telephone when he would get the stock. . . . Plaintiff wrote on 12th October, and defendant answered on 14th, stating that the cost of manufacturing staves was as much as the price at which they were booked, and he would have to cancel the order and charge plaintiff a little higher price, and said he would . . . send a car by the first of the following week. . . .

Plaintiff went to Fesserton on 29th October and saw defendant, who said he had to cancel plaintiff's order for stock. Plaintiff wanted him to send one car at the old price, and in effect said that if that were done he would forego his right to the other two cars. Defendant would not agree to that, but said he would let him have a car of stock for which he would charge him \$11 for staves and hoops and 6 cents for heading. Plaintiff agreed to pay the prices named for a car-load, which defendant said he would ship on 3rd November, but he failed to carry out his promise.

On 20th November defendant telegraphed plaintiff: "Can load car Monday at prices agreed. Shall I ship?" . . . Plaintiff did not reply. . . .

I find that plaintiff did not agree to a rescission of the old contract, and even had he orally agreed to rescind, there was no contract entered into on the part of defendant sufficient to satisfy the Statute of Frauds binding him to supply the one car-load at prices he had named. . . .

[Reference to Benjamin on Sales, sec. 218; Moore v. Campbell, 10 Ex. 323; Noble v. Ward, L. R. 1 Ex. 117, L. R. 3 Ex. 135.]

In the present case the alleged agreement to rescind was after breach.

A small car would contain 16,000 staves, 1,000 sets of headings, and 6,000 hoops. The largest cars have a capacity of about 28,000 staves, 16,000 sets of headings, and 10,000 hoops . . . and plaintiff is entitled to recover damages on the basis of the quantities which could be shipped on one small and two average sized cars. . . .

Judgment for plaintiff for \$298 with costs on High Court scale.