

the plaintiff requested a postponement and the defendant acquiesced. That did not appear to the learned Judge of Appeal to be the effect of the conversation; but, if it were, such an agreement, to be effective, must be in writing: *Plevins v. Downing*, supra.

The appeal should be allowed with costs, and the action dismissed with costs.

MACLAREN, J.A., and SUTHERLAND, J., agreed with FERGUSON, J.A.

HODGINS, J.A., agreed in the result, for reasons stated in writing. He referred to *Williams v. Moss' Empires Limited*, [1915] 3 Q.B. 242; *Jones v. Gibbons* (1853), 8 Ex. 920; and the *Doner* case, supra.

As expressed in the last mentioned case, he still held the view that an inference of abandonment was not to be drawn from mere silence.

LATCHFORD, J., agreed with HODGINS, J.A.

Appeal allowed.

FIRST DIVISIONAL COURT.

APRIL 16TH, 1918.

*GEROW v. HUGHES.

Contract—Sale of Flour—Failure to Deliver Full Quantity—Weekly Deliveries—Delivery “as Required”—Two Different Kinds of Flour Contracted for—Necessity for Specifying Requirements—Demand for Delivery—Construction of Contract—Loss of Right to Require Delivery—Abandonment—Inference from Silence.

Appeal by the defendant from the judgment of KELLY, J., 13 O.W.N. 8.

The appeal was heard by MACLAREN and HODGINS, JJ.A., LATCHFORD and SUTHERLAND, JJ., and FERGUSON, J.A.

W. N. Tilley, K.C., for the appellant.

R. McKay, K.C., for the plaintiff, respondent.