

The
Ontario Weekly Notes

VOL. XII.

TORONTO, JULY 13, 1917.

No. 17

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JULY 4TH, 1917.

HAMILTON BREWING CO. v. THOMPSON.

*Sale of Goods—Bottled Beer Sold in Cases—Contract—Invoices—
Return of Empty Cases and Bottles—Credit for Part Returned—
Evidence in Reply—Custom of Trade—Admissibility.*

Appeal by the defendant from the judgment of SUTHERLAND, J., who tried the action, without a jury, at Sandwich, in favour of the plaintiff company.

The defendant became a customer of the plaintiff company early in 1915, and continued to deal with the plaintiff company down to September, 1916. The commodity purchased was lager beer of the plaintiff company's manufacture. The beer was shipped to the defendant in cases, each of which contained two dozen bottles. A large number of cases, after having been emptied were returned by the defendant to the plaintiff company; and the action was brought to recover the price of the cases that had not been returned.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

J. H. Rodd, for the appellant.

W. R. Smyth, K.C., for the plaintiff company, respondent.

The judgment of the Court was read by MEREDITH, C.J.O., who said that it appeared not to be disputed that the prices quoted in the letter of the respondent of the 11th January, 1915, which brought about the inception of the business transactions between the parties, did not include the cases in which the beer was contained; and the difference between the parties was to the