

The defendants have the right to sweep the snow, whether the fall is under or over 6 inches, to the side of the street. It is that snow so swept from the tracks to the side of the street and there accumulated, where it exceeds 6 inches, that it is to be removed. The ascertainment must be upon evidence; and the evidence adduced at the trial was of so uncertain a character that, if the defendants desired, they should have a reference as to damages only.

The defendants must within 10 days elect whether or not they will take a reference. If they do not take a reference, the appeal should be dismissed with costs. If a reference is taken, the costs of the appeal and reference should be in the discretion of the Master; and in other respects the appeal should be dismissed.

MULOCK, C.J.Ex., agreed with CLUTE, J.

RIDDELL, J., agreed in the result, for reasons stated in writing.

SUTHERLAND, J., agreed with RIDDELL, J.

KELLY, J., agreed in the result, for reasons stated in writing.

*Appeal dismissed, subject to a reference
as to damages, if desired.*

SECOND DIVISIONAL COURT.

DECEMBER 18TH, 1918.

*HALL MOTORS LIMITED v. F. ROGERS & CO.

Contract—Sale of Goods—Action for Price—Items of Claim—Counterclaim for Damages for Breach—Evidence—Onus—Claim for Return of Money Paid—Dismissal of Part of Counterclaim—Reservation of Leave to Set up in New Action—Appeal—Costs.

An appeal by the plaintiffs and a cross-appeal by the defendants from the judgment of COATSWORTH, Jun. Co. C.J., dismissing with costs an action brought in the County Court of the County of York, to recover \$490.40 for work done for the defendants, dismissing without costs the defendants' counterclaim for \$800 (while reserving the defendants' right to bring a separate action therefor), and dismissing with costs another counterclaim of the defendants, except as to \$31.43, for which sum judgment was given for the defendants with Division Court costs—costs to be set off pro tanto.