

plaintiff, in an action for damages for breach of a contract to deliver 600 cases of macaroni.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

R. W. Hart, for the appellants.

No one appeared for the plaintiff, respondent.

MEREDITH, C.J.C.P., delivering the judgment of the Court, said that the one question involved was purely a question of fact, the finding of which depended mainly upon the question which of two witnesses should be believed. A binding contract in writing was entered into between the parties, by which the defendants sold and were to deliver to the plaintiff 1,200 cases of macaroni. War broke out, and the defendants thought they should be excused. The plaintiff accepted this view, and the parties entered into negotiations for another contract—a substituted one. The plaintiff testified that the original contract was reduced to one for 600 cases; the defendants' agent, who was said to have made this new contract, positively denied having done so. In this conflict of testimony, the trial Judge apparently credited the plaintiff and discredited the agent of the defendants. The defendants having failed to deliver the 600 cases, the learned Judge gave the plaintiff reasonable damages for the breach of that contract. The probabilities were in favour of the plaintiff's view; and in one of their letters the defendants referred to the delivery of the 600 cases as having been "contracted with our agent."

Counsel for the appellants had said all that could be said in support of the appeal, but had an uphill and impossible task.

*Appeal dismissed without costs.*

SECOND DIVISIONAL COURT.

FEBRUARY 4TH, 1916.

HYATT v. ALLEN.

*Company—Directors—Trustees—Account—Reference—Report—Salaries and Disbursements of Directors—Value of Preferred Shares Received by Directors—Evidence—Interest—Estoppel—Remuneration of Trustees—Costs of Reference—Costs of Appeal.*

Appeal by the defendants from the order of SUTHELAND, J., ante 173, upon appeal and cross-appeal from the report of a