

the engineers of the plaintiffs estimated the quantity as about 100 tons. Out of this, the plaintiffs sold 30 tons to one Grant. The defendant negotiated with one Barnes, acting manager for the plaintiffs, for the purchase of the remainder. Barnes informed the defendant that the quantity was estimated at about 70 tons, after the sale to Grant; and gave permission to the defendant to inspect it. Barnes quoted 15 cents as the price, and a bargain was come to, not in writing. The defendant asked for a written warranty that there were no liens or incumbrances upon the wire, and that was given. He did not ask for any warranty as to quantity. It turned out that the weight of the wire was only 100,700 lbs. The defendant paid the plaintiffs \$13,827.75, or \$1,277.25 less than the quantity delivered, at the contract-price, would amount to. The plaintiffs sued for this balance, and the defendant counterclaimed to recover it against the plaintiffs as damages for breach of contract, that is, for a shortage of 39,300 lbs. at  $3\frac{1}{4}$  cents per pound.

The whole question was, whether the defendant, upon the contract, was entitled to have 70 tons delivered to him or only such quantity as the plaintiffs, at the time of the contract, actually had.

The trial Judge found that the sale was of an estimated or approximate quantity; that the estimate was made by the engineers, and the knowledge of the plaintiffs was founded upon the engineers' statement.

Taking the findings of fact of the trial Judge and the indisputable fact that the subject-matter of the contract was the remainder of the copper wire scrapped by the plaintiffs and on hand after the sale to Grant, the judgment in favour of the defendant was wrong in principle.

In the case of an oral contract such as this, what the parties said and what terms they agreed to are questions of fact—the meaning and effect of the contract, when its terms are ascertained, are questions of law.

Here the sale was based upon an estimate and the defendant should pay the full price for the quantity delivered.

Reference to Halsbury's Laws of England, vol. 7, p. 521, para. 1046; vol. 25, pp. 214, 215, para. 366; and to many decided cases.

The plaintiffs duly performed the contract entered into, and were entitled to recover for the quantity delivered at 15 cents per lb., less the sums paid as set out in the statement of claim with interest on the balance. The counterclaim should be dismissed with costs, and the plaintiffs should have the costs of the action and of the appeal.