

on the three telegrams. On the 27th December, the defendants' position was made plain.

On the 16th October, the market fell from \$1.15 to \$1.10, then rose to \$1.15, and remained at about that price till the middle of November, when it rose to \$1.30, and remained about the same till the 1st December, when it rose to \$1.40; and, after a period of stagnation, during which the price rose a little, there was an abrupt rise; on the 8th January, 1916, on which day the plaintiffs threatened action, the market price was \$1.85.

The action was tried without a jury at Belleville.  
E. G. Porter, K.C., for the plaintiffs.  
G. H. Kilmer, K.C., for the defendants.

MIDDLETON, J., in a written opinion, after stating the facts, said that he was quite satisfied that the defendants acted throughout in perfect good faith; they thought there was no contract.

The question whether there was a contract must be determined from the correspondence.

"It is for the plaintiff, in an action for breach of contract, to shew that the proposal made by him and accepted by the defendant is so clear and unambiguous that the defendant cannot be heard to say that he misunderstood it. It is not a matter for the Court to construe:" *Falck v. Williams*, [1900] A.C. 176.

The telegram of the 16th was not an attempt to introduce a new term into the contract; it was an acceptance, followed by a request for a favour in regard to the mode of shipment.

There was thus a contract: but there were two answers to the plaintiffs' claim. First, the contract was in effect abandoned when the plaintiffs, in face of the falling or stationary market, allowed matters to slumber for two months—the contract was not for future delivery. Second, the plaintiffs had not sustained any damage, or at most nominal damage, for the contract was one under which the goods should have been delivered at once—at most within two or three weeks—and was broken at a time when other potatoes could have been bought at a price not exceeding the contract price.

If the breach took place later—on the 27th December—the damages would be 25 cents per bag on 1,700 bags, or \$425.

*Action dismissed with costs.*