

could do so, but at his own risk, and I wouldn't be responsible for them, and should the men remain on the steamer after the steamer cleared St. John, N.B., I would send him an order for whatever the men owed him; if they cleared out he gets nothing. So he said: "Oh, well, I will have to take the chances."

The men deserted, or all but two, at St. John, taking the goods with them.

The learned Judge makes no finding as to which story he accepts, but simply decides that so far as the evidence is before him, under the issues in the present case, plaintiff cannot recover; and as already observed, I think he was clearly right, and this appeal must be dismissed with costs.

GRAHAM, E.J., and MEAGHER, J., concurred.

DRYSDALE, J.:—I agree in dismissing the appeal. I do not think it is a case for amendment.

RUSSELL, J., dissented.

NOVA SCOTIA.

SUPREME COURT.

APPEAL.

FULL COURT.

FEBRUARY 4TH, 1911.

RICHEY DOING BUSINESS AS THE TORONTO SEWER
PIPE CO. v. THE CITY OF SYDNEY.

Sale of Goods—Action for Price—Contract by Correspondence—Specifications.

Appeal from the judgment of LAURENCE, J., in favour of plaintiff in an action for goods sold and delivered.

F. McDonald, in support of appeal.

H. Mellish, K.C., contra.

The judgment of the Court was delivered by

DRYSDALE, J.:—This is an appeal from the judgment of LAURENCE, J., directing recovery against defendants in respect of two shipments of sewer pipe ordered by defendants from plaintiffs, and dated August 21st and September