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APPELLATE DIVISION.

MARCH 9TH, 1914.

NEOSTYLE ENVELOPE CO. v. BARBER-ELLIS LIMITED.

Contract—Sale of Right to Manufacture and Sell Patented Envelopes—Agreement to Pay Royalties—Breach—Justification—Representations—Post Office Regulations—Evidence—Repudiation of Contract—Grant to Another of Exclusive Right to Manufacture and Sell—Duty to Mitigate Loss.

Appeal by the plaintiff company from the judgment of FALCONBRIDGE, C.J.K.B., 4 O.W.N. 1585, dismissing the action, which was brought for damages for breach of a contract.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

C. S. MacInnes, K.C., and Christopher C. Robinson, for the appellant company.

G. H. Kilmer, K.C., for the defendant company, the respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O., who, after setting out the agreement and referring to the pleadings and the findings of the trial Judge, proceeded:—

It may be assumed in favour of the respondent that what the parties were negotiating about was the right to manufacture and sell envelopes that, to use the language of the Chief Justice, "would answer the requirements of the Canadian post office department so as to send the matter enclosed therein at the lower rate of postage;" and it may be that, if the only envelope that was covered by the patent and which the respondent had acquired the right to manufacture and sell was the envelope exhibit 7, a, b, c, and d, it would have been proper to conclude