

HOE & CO. v. WILSON PUBLISHING CO. OF TORONTO—MIDDLETON,
J.—JAN. 20.

Sale of Goods—Action for Price—Defence that Goods not Supplied in Accordance with Contract—Acceptance—Delay in Delivery—Interest—Counterclaim.]—Action for the price of certain printing machinery. Defence that the machinery was not supplied in accordance with the contract, and counterclaim for damages. The action and counterclaim were tried without a jury at Toronto. MIDDLETON, J., in a written judgment, said that the questions involved were entirely of fact. The plaintiffs must fail unless they had complied with the contract or the defendants had waived its provisions either by accepting the machinery delivered or by expressly agreeing to some variation in the contract. The goods were some stereotyping machinery and a printing press. There was one contract and one price for all. The stereotyping machinery was in accordance with the contract. The printing press was accepted by the defendants. It was used by the defendants in the ordinary course of business for the printing of their papers. This constituted acceptance; and the defendants could then rely only upon an abatement of price or damages if it did not comply with the contract. The press was not ready to run as soon as might have been reasonably expected. This was partly owing to delay acquiesced in—indeed requested—by the defendants, and in the endeavour by the plaintiffs to meet the somewhat exacting requirements of the defendants. Only a small sum had been paid on account of the price, and any damages by reason of delay would be compensated for by allowing interest from the 1st May, 1915, only. Judgment for the plaintiffs for \$8,510 and interest from the 1st May, 1915, and costs. Counterclaim dismissed with costs. W. N. Tilley, K.C., and W. L. Scott, for the plaintiffs. Glyn Osler and R. C. H. Cassels, for the defendants.