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COMMERCIAL LAW REPORTS OF CANADA.

(ANNOTATED.)

BEING REPORTS OF IMPORTANT DECISIONS RELATING TO
COMPANIES, BANKS AND BANKING, INSURANCE,
INSOLVENCY, AND SIMILAR SUBJECTS IN
THE FEDERAL AND PROVINCIAL
COURTS, TOGETHER WITH
ANNOTATIONS.

[IN THE HIGH COURT OF JUSTICE FOR ONTARIO.]

SMITH V. FORBES ET AL.

Brokers—Instruction to purchase stock—Discretion—Ratification.

Action against the defendants, stock-brokers at Toronto, for breach of duty in not buying certain stock for the plaintiff. On March 25th, the plaintiff by telegram instructed defendants to buy the stock at 114 or less, which defendants by letter in reply agreed to do, but said that the telegram was received too late to enable them to act on it that day. On Monday following, the 27th, defendants telegraphed plaintiff that they had cancelled his order in the meantime, as there was unfavorable rumours about the stock, and that they were writing. The plaintiff received this about noon the same day, but did not answer it, waiting for the letter, which he received about five o'clock the following day, the 28th, being to the same effect as the telegram, and asking the plaintiff to repeat the order if he wished defendant to buy for him. The plaintiff on the receipt of the letter wrote, that from defendants telegram he expected something more tangible and definite than mere general unfavorable impression and suspicion for not filling his order, and therefore waited for defendants' letter; that he had given a positive order to buy, &c.

Held, (1) That the correspondence shewed that the plaintiff ratified or assented to the defendants' course of conduct in disobeying his instruction and exercising their discretion; that the construction of the correspondence was for the Court and not for the jury:

(2) That at all events no damage was proved, as on the Monday when the plaintiff became aware that defendants had decided not to buy, the stock was still at 114.

ACTION against the defendants, stock-brokers, carrying on business in Toronto, for breach of duty in not buying a quantity of telegraph stock.

The action was tried before Armour, J., and a jury, at Toronto, at the Summer Assizes of 1882.