

CLUTÉ, SUTHERLAND, and KELLY, JJ., agreed with MULOCK, C.J., Ex.

RIDDELL, J., agreed in the result, for reasons stated in writing.

Appeal allowed.

SECOND DIVISIONAL COURT.

DECEMBER 10TH, 1918.

OWEN SOUND WIRE FENCE CO. v. UNITED STATES
STEEL PRODUCTS CO.

Contract—Sale of Goods—Breach—Construction of Contract—"Specifications"—"Specify"—Dimensions of Wire—Evidence—Explanation of Technical Trade Terms.

Appeal by the defendants and cross-appeal by the plaintiffs from the judgment of FALCONBRIDGE, C.J.K.B., 13 O.W.N. 104.

The appeal and cross-appeal were heard by MULOCK, C.J.Ex., RIDDELL, LATCHFORD, SUTHERLAND, and KELLY, JJ.

Wallace Nesbitt, K.C., and Britton Osler, for the defendants.
W. H. Wright, for the plaintiffs.

SUTHERLAND, J., read a judgment in which he said that the action arose out of a contract in writing, dated the 18th October, 1915, whereby the defendants agreed to sell and furnish to the plaintiffs 1,000 tons of "galvanised Bessemer wire No. 9 and coarser" at \$2.25 per 100 lbs., f.o.b. mill, Pittsburg, and "extra for shipment from Cleveland 42 cents per 100 lbs."

The contract contained the following clause: "Specifications shall be furnished to the seller by the buyer in substantially equal monthly quantities, beginning on or before the first day of December, 1915, and ending on or before the last day of February, 1916. Buyer's failure to furnish specifications as aforesaid may, at seller's option, without notice to buyer, be treated and considered as a waiver on the part of the buyer of all right to demand any subsequent delivery of the unspecified portion of the goods."

To explain and make clear what the technical term "No. 9 and coarser" meant in the trade, evidence was properly admitted at the trial; it shewed that, while the exact gauge of No. 9 wire is .144 of an inch in diameter, any diameter varying within the limits between .140 and .148 was known in the trade to be covered