defendants was, that they were not liable to pay for any volumes in excess of 150, and were entitled free of cost to all volumes in excess. When it was ascertained that the series would overrun 150 volumes, there was no repudiation of the contract; indeed that course would have been disastrous to all concerned.

The case must be determined entirely upon the terms of the contract itself. Unless the words in brackets "(150 volumes more or less)" controlled and dominated the contract, the obligation of the defendants to pay was obvious. No such potency could be attributed to those words. The sale was a sale of a certain number of complete sets of the work. A portion of a set would be of comparatively little value. Each party contemplated the complete set being furnished and paid for. The sale was a sale of an essential unity. The trouble was that the price payable for that unity was measured by an arbitrary gauge and was not fixed. This made it plain that the number of volumes given was an estimate. Neither party to this suit could control the action of the publishers; and the fixing the price by the volume, instead of naming a lump sum for the set, indicated that payment was to be based upon the actual number of volumes. There was not in the contract any room for the suggestion that the plaintiffs were to supply the volumes beyond 150 free.

When the excess was so large that it might be said to be beyond anything contemplated by the parties, if restitution had been possible, it might be that there was a right of rescission. If there had been any foundation for an action of deceit, there would have been a claim for damages. Those alternatives failing, the contract must govern according to its true interpretation. The first endeavour must be to ascertain the true subject-matter of the contract. When that was done, the interpretation of the contract became comparatively simple.

The plaintiffs were entitled to recover the price of the four volumes in question.

The counterclaim must be dismissed.