

ROSE, J., was of opinion, for reasons stated in writing, that the appeal should be allowed and the action dismissed in so far as the policy covering the shop was concerned; that, as to the other policies, there should be a new trial to ascertain the amount of the loss; that the plaintiffs should pay the defendants the costs of the appeal; that the plaintiffs' costs of the former trial should be paid by the defendants; and that the costs of the new trial should be in the discretion of the trial Judge.

*Judgment as stated by the Chief Justice.*

SECOND DIVISIONAL COURT.

NOVEMBER 23RD, 1917.

ELLIOT v. KEENAN BROTHERS LIMITED

*Contract — Formation — Correspondence — Offer — Acceptance — Parties not ad Idem—Difference as to Subject of Contract—Purchase and Sale of Lumber—Action for Damages for Refusal to Accept.*

Appeal by the defendants from the judgment of the Judge of the County Court of the County of Brant in favour of the plaintiff for the recovery of \$332.13 damages, with costs, in an action for damages for refusal to accept lumber, in breach of an alleged contract.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

H. S. White, for the appellants.

W. S. Brewster, K. C., for the plaintiff, respondent.

MEREDITH, C.J.C.P., in a written judgment, said that there might have been no great difficulty in supporting the conclusions of the County Court Judge if the plaintiff had not insisted that the transaction in question included one-inch lumber, though this lumber was, in comparison with the rest of the lumber in question, little in quantity and small in value.

At the trial, a witness firmly testified that the rejection of the lumber was because of the plaintiff's insistence that the one-inch boards were included in the transaction, and should be taken. On the argument of the appeal, the plaintiff still maintained that the one-inch lumber was included in the sale which he alleged.