

This decision stands alone, but does not appear to have been questioned. None of the Ontario decisions is binding on this Court; and, unless the statutes are substantially different, the English decision should be followed: *Trimble v. Hill* (1879), 5 App. Cas. 342. There is no sound distinction in the statutes or Rules, and the English decision should be followed.

The appeal should be dismissed with costs.

LENNOX and ROSE, JJ., concurred.

MEREDITH, C.J.C.P., agreed in the result, for reasons stated in writing.

Appeal dismissed with costs.

SECOND DIVISIONAL COURT.

JUNE 22ND, 1917.

*LONDON ELECTRIC CO v. ECKERT.

Contract—Sale of Goods at Price per Pound—Estimated Weight—Construction of Contract—Sale of Definite Quantity or of all Goods of the Kind in Vendor's Possession—Absence of Warranty of Quantity—Claim for Quantity actually Delivered at Contract-price—Counterclaim for Damages for Shortage.

Appeal by the plaintiffs from the judgment of BOYD, C., at the trial of the action, without a jury, at Toronto, in November, 1916, in favour of the defendant, in an action to recover \$1,277.25 as the balance of the sale-price of a quantity of copper wire, and a counterclaim by the defendant for the same amount as damages for breach of the contract of sale, that is, for a shortage in the quantity of wire.

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

D. L. McCarthy, K.C., for the appellants.

Sir George Gibbons, K.C., for the defendant, respondent.

LENNOX, J., in a written judgment, said that the plaintiffs' agreement was, to sell the defendant a quantity of copper wire which the plaintiffs had stored upon their premises at 15, cents per lb., the defendant to take delivery upon the plaintiffs' premises. The wire was scrapped. When it was taken down,