

KINNEY AND COLLIVER CANNING CO. v. WHITTAL CAN CO.—
LENNOX, J.—JAN. 19.

Contract—Sale of Goods—Shortage in Deliveries—Mistake—Overpayments—Recovery—Interest—Breach of Contract—Damages—Reference—Costs.—Action to recover moneys alleged to have been paid by the plaintiffs to the defendants under a mutual mistake of fact and for damages for breach of a contract. The action was tried without a jury at Picton. LENNOX, J., in a written judgment, said that the plaintiffs were packers or canners of fruit and vegetables in the county of Prince Edward, and the defendants were manufacturers of tin cans, carrying on business in Montreal. The contract was for the purchase by the plaintiffs from the defendants of tin cans to fill the plaintiffs' "requirements," which were to be notified to the defendants. The contract was in writing. The plaintiffs asserted that there were shortages in delivery. After a full review and discussion of the evidence, the learned Judge found that the plaintiffs were entitled to recover the sums of money sued for as overpayments with interest from the date of the writ of summons, and also (with some hesitation) that the plaintiffs were entitled to recover damages for breach of contract. There should be judgment for the plaintiffs for \$2,131.72, with interest thereon from the date mentioned, and the costs of the action up to and including this judgment, and directing a reference to the Local Master at Picton to assess damages. If actual damage is established, there will be judgment for the plaintiffs for the sum found, with the costs of the reference. If the plaintiffs fail to establish actual damage, the defendants will have judgment for the costs of the reference, less \$5 for nominal damages. McGregor Young, K.C., and E. M. Young, for the plaintiffs. E. G. Porter, K.C., and C. A. Payne, for the defendants.