

THE COURT (MEREDITH, C.J., MACMAHON, J., TEETZEL, J.), allowed the appeal of Bangham, and made an order staying proceedings in Fulmer's action and directing that he be added as a defendant in Bangham's action. Costs here and below to be costs in the latter action unless the trial Judge otherwise orders. The Judge at the trial to dispose of the costs of Fulmer's action.

MAY 15TH, 1905.

DIVISIONAL COURT.

MEECH v. FERGUSON.

*Sale of Goods — Action for Price — Warranty of Quality —
Deduction for Inferiority — Notice of Breach.*

Appeal by defendant from judgment of junior Judge of County Court of Leeds and Grenville in favour of plaintiff for the recovery of \$75.57 with County Court costs in an action for \$100.25, the balance of the price of two lots of cheese sold to defendant.

G. F. Henderson, Ottawa, for defendant.

W. E. Raney, for plaintiff.

The judgment of the Court (MEREDITH, C.J., FALCONBRIDGE, C.J., ANGLIN, J.), was delivered by

ANGLIN, J.:—The cheeses were sold as and warranted to be "finest" at 8 5-8 cents per lb. Defendant received and retained the cheeses, but, alleging that they were of inferior quality, remitted to defendant a cheque for \$458.47, being, as he alleged, their total fair value, based for one lot, known as the South Branch lot, on a price of 7 cents per lb., and for the other lot, known as the Garatton lot, on 7 1-8 cents per lb.

In regard to the South Branch cheeses the Judge finds explicitly that they were of inferior quality, but that a fair deduction on this account would be 1 cent per lb. in lieu of the 1 5-8 cents retained by defendant; and on this head he allowed defendant \$15.42. . . . A perusal of the evidence satisfies me that the Judge's finding of fact cannot be disturbed. . . .

As to the Garatton cheeses the case assumes a different aspect. Counsel for defendant argued . . . upon the footing that the Judge had found in his favour upon the question as to the quality of the cheeses, but had held his