

HON MR. JUSTICE LENNOX.

JUNE 20TH, 1913.

KREHM BROS. FUR CO. v. D. H. BASTEDO & CO.

4 O. W. N. 1488.

*Sale of Goods—Action for Price — Payment — Promissory Notes
Given for Price Discounted—Counterclaim—Costs.*

LENNOX, J., dismissed plaintiff's action for the price of certain goods sold and delivered to defendants, finding that payment had been made therefor to plaintiff's satisfaction.

Action to recover \$1,652, the price of certain furs alleged to have been sold and delivered to defendants, and counterclaim by defendants for alleged breach of contract.

A. J. Russell Snow, K.C., for plaintiffs.

Gideon Grant, for defendants.

HON MR. JUSTICE LENNOX:—This action involves questions rarely arising, but no difficulty in determining the conclusion to be reached. The defendants say that they settled the claim sued on by delivering to the plaintiffs negotiable instruments for the amount, and that these instruments having passed into the possession, and apparently into the ownership, of one Abraham Schacher, that they took them up before maturity and paid Schacher the amount less a discount allowed for the time they had to run, and that this was done with the knowledge and approval of the plaintiffs. I see no reason to doubt the truthfulness of Mr. Bastedo's evidence or the *bona fides* of the transaction he depose to; and he is clearly corroborated by an independent witness. In addition to this, the documentary evidence, the way in which the plaintiffs launched their claim, their suit against Schacher, and their entirely unjustifiable charge of conspiracy, all go to confirm what the defendants allege.

It is quite true that the plaintiffs have been over-reached and are probably committed to a serious loss, but this all arises out of matters wholly unconnected with the defendants. There is a small item of from \$15 to \$30 for samples, not included in the vouchers given, and in connection with this the defendants allege a breach of contract, and claim damages. There was very little said about this part of the claim, or the counterclaim, at the trial, and I think it will be wise and fair to leave it out on both sides.

There will be judgment dismissing the action with costs and the counterclaim without costs.