

This ignored the fact that the debt was due, so far as the company was concerned. The company and the directors were parties to the same note, and on one day's demand it became due as to all.

The appeal should be allowed and judgment should be granted for the amount now due the bank and costs; the amount to be shewn by an affidavit giving credit for all money received pending the action, on account of the debt, to be filed before judgment actually issues.

MIDDLETON, J.

APRIL 26TH, 1916.

POWERS & SON v. HATFIELD & SCOTT.

*Contract—Sale of Goods—Formation of Contract from Correspondence—Acceptance of Offer—Absence of Ambiguity—Breach by Failure of Vendor to Deliver Goods—Abandonment—Rise in Market-price—Failure to Prove Damage—Time of Breach.*

Action for damages for breach of an alleged contract for the sale by the defendants to the plaintiffs of five car-loads of potatoes.

The plaintiffs were dealers at Trenton, Ontario, and the defendants were dealers at Montreal.

The allegation of a contract was based upon correspondence as follows:—

Telegram from the plaintiffs to the defendants on the 14th October, 1915: "Wire at once what you can give us five cars number one White Delaware potatoes delivered Trenton."

Telegram in answer, next day: "Offer four cars Delaware dollar fifteen delivered Trenton immediate acceptance."

("Four" was a mistake for "five.")

Telegram of the 16th October, plaintiffs to defendants: "Your wire of October 15th will accept try and ship them week apart wire if you can give us four cars more."

Letter of the 16th October, defendants to plaintiffs: "Cannot quite agree to ship your cars a week apart on the prices we have quoted you, but will ship them at slow intervals apart."

No reply was made to this letter, and the defendants, regarding this as a cross-proposal which was not accepted, did nothing further.

The next action was on the 17th December, when the plaintiffs wrote a letter requesting delivery of the four cars.

Correspondence followed, in which the plaintiffs maintained and the defendants denied that there was a completed contract