

BLOHM v. HAYES—HAYES v. BLOHM—FALCONBRIDGE, C.J.K.B.—  
Nov. 20.

*Contract—Sale of Goods—Interlineation—Fraud—Reformation—Findings of Fact of Trial Judge.*—On the 26th October, 1914, the parties signed an agreement whereby Hayes sold to Blohm "about one thousand barrels of apples," to be delivered to the Grand Trunk station at Smith's Falls, except about 500 barrels to be shipped at Weller's Bay, at the price of \$1.46 per barrel f.o.b. cars, and to consist of certain named varieties of apples. Hayes agreed, wherever possible, to have the apples teamed to the Trenton Cold Storage without expense to Blohm. Terms of payment were agreed upon. Hayes delivered nearly 500 barrels of the apples, and about 267 barrels of culls. In the action of Blohm v. Hayes, Blohm claimed damages for non-delivery of over 500 barrels, and he also alleged that those that were delivered were improperly marked and graded, and claimed damages therefor. In Hayes v. Blohm, Hayes obtained an interim injunction restraining Blohm from selling or removing apples deposited with a storage company in Trenton, and claimed \$399.80 as due for apples delivered. The injunction was dissolved on the 11th January, 1915, having been in force for about a month; and Blohm claimed damages therefor. It was a term of the order dissolving the injunction that Blohm should pay \$182.20 into Court, which he did. In the written agreement, Blohm interlined the words "more or less" after the words "about one thousand barrels of apples," ostensibly to meet the objection of Hayes, who did not know the number of barrels there would be from his own orchard and which he could purchase. The two actions were consolidated and tried without a jury at Belleville. The learned Chief Justice found the facts to be as stated in the evidence of Hayes and his wife. The true agreement was, that Blohm should have all the apples that Hayes had or could get. The pleonastic phrase "about one thousand barrels more or less" would allow of great elasticity in construction. The account of the transaction given by Hayes shewed the real bargain. The agreement as to culls was, that Hayes should get for Blohm all the culls he could get, irrespective of the number set out in the contract. The contract should, if necessary, be reformed, as Blohm's conduct amounted to a fraud upon Hayes. Blohm in fact laid a trap for Hayes by inserting words which he pretended would answer his objection to the agreement as drawn. Blohm's action dismissed with costs. Judgment for Hayes for \$399.80, plus \$10 damages, in all