

accept draft amount named; our offer two cars means here 1,000 cases, which prepared to settle, you furnishing documentary evidence sworn to price you covered." Again, this does not seem to bear out the thought that the defendants were so confident at that time that the apples were prime. This, however, is only an indication, but I mention it in passing.

This latter correspondence incidentally introduces a question which was raised by the defendants in the 8th paragraph of the statement of defence, the defendants alleging that there was practically an agreement to settle between the parties, which was a condition precedent to the plaintiffs recovering anything. I cannot say that there is much in this contention. It arose in this way. The plaintiffs on 5th November, in replying to the defendants' telegram of 4th November, saying prepared to settle subject to documentary evidence being sworn to, said they were perfectly willing and ready to let them have all particulars as to the two cars bought in against the contract, and would have the same sworn to in case the defendants demanded it, stating also that they bought both cars through brokers in New York, one car from L. S. Towne, Rose, New York, and the other from Young & Beach, Ontario. There was no reply to this by the defendants, and no demand ever made for the sworn testimony, but it now turns out in evidence that the particulars given in that letter of 5th November by the plaintiffs are correct, and I cannot therefore see that there is any force in the question raised in the 8th paragraph of the statement of defence as to settlement.

The last question I have to discuss is: Are the plaintiffs entitled to damages, and if so, how much?

After the breach of contract by not supplying the number of cases to the car, as the contract called for, and by shipping apples which were not prime, there was some correspondence between the plaintiffs and defendants about the matter, and on 29th October the plaintiffs wrote the defendants and concluded in this way: "In conclusion we can only repeat that we are not willing to let you off on your contract, and shall proceed to buy in the apples to fill your contract, and hold you for whatever loss there may be." And on 31st October the plaintiffs bought through John Mearns, broker, New York, two cars—600 cases each—prime wood dried evaporated apples at 5¾ cents per pound delivered New York each free lighterage.