

The
Ontario Weekly Notes

VOL. XVIII. TORONTO, JUNE 25, 1920.

No. 15

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 14TH, 1920.

*MASON & RISCH LIMITED v. CHRISTNER.

Damages—Breach of Executory Agreement for Purchase of Piano from Manufacturer—Measure of Damages—Difference between Cost of Manufacture and Sale-price—Loss of Profits—Duty of Vendor to Mitigate Damages—Absence of Open Market—Appeal—Reduction of Amount Assessed.

Appeal by the defendant from the order and decision of MIDDLETON, J., 47 O.L.R. 52, 17 O.W.N. 421, dismissing an appeal from the report of a Local Master.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, J.J.A.

J. M. Ferguson, for the appellant.

J. G. Kerr, for the plaintiffs, respondents.

MACLAREN, J.A., reading the judgment of the Court, said, after stating the facts, that, the transaction being one where the consideration consists partly of money and partly of goods, the principles relating to sales apply, and not those relating to barter or exchange: Chalmers' Sale of Goods Act, 7th ed., p. 5; Halsbury's Laws of England, vol. 25, p. 209; Corpus Juris, vol. 7, p. 931; and cases cited.

It is well-established that, when a buyer wrongfully refuses to accept purchased goods, the damages for which he is liable are, if there be a market for them at the place of delivery, the difference between the contract-price and the market or current price after deducting the expenses of the resale: Dunkirk Colliery Co. v. Lever (1878), 9 Ch.D. 20; at p. 25; Joyce on Damages, vol. 2, sec. 1651, p. 1698.

* This case and all others so marked to be reported in the Ontario Law Reports.

27—18 O.W.N.