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NOVA SCOTIA.

SUPREME COURT.

FULL COURT.

DECEMBER 15TH, 1910.

BROWNLIE & CO. v. THE SYDNEY CEMENT CO.

Sale of Goods—Refusal to Accept—Goods Supplied not According to Contract—Liability for Price Where no Set-off or Counterclaim—Warranty—Pleadings—Evidence.

Appeal from the judgment of LAURENCE, J., in favour of plaintiffs, for the amount claimed with costs in an action for goods sold and delivered.

H. Mellish, K.C., in support of appeal.

G. A. R. Rawlings, contra.

RUSSELL, J.:—This is an action for the price of a quantity of pebbles sold and delivered by the plaintiffs to the defendants, but which were rejected upon examination as not being according to contract. I cannot gather that there is any distinct finding of fact by the learned trial Judge as to the quality of the pebbles. He says:—

“The defence set up is that of some ten or fifteen bags of the six hundred only about 20 or 30 per cent. of the pebbles are usable or of good quality according to those who examined them. I am unable to accept this as a satisfactory reason for rejecting the whole shipment. The most that can be said is that, of the small number of bags examined, the pebbles were inferior in quality but not wholly useless. In my opinion the plaintiffs are entitled to recover in this