

the defendants were entitled to damages for breach of a contract, and directing a reference to ascertain the amount.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, LATCHFORD, and MIDDLETON, JJ.

Shirley Denison, K.C., for the appellants.

G. S. Hodgson, for the defendants, respondents.

LATCHFORD, J., read a judgment in which he said that on the 12th April, 1917, the plaintiffs sent to the defendants a document headed "Contract between Canada Cycle and Motor Company Limited and J. Mehr & Son, Toronto, Ontario," in these words: "J. Mehr & Son hereby agree to take the accumulations of scrap from the Canada Cycle and Motor Company Limited for a period of one year from this date, that is, until April 12th, 1918, the prices to be as follows: No. 1 heavy meltings steel at \$16 per g. t.; light steel at \$7.50 per g. t.; bicycle turnings at \$7.75 per g. t.—f.o.b. Canada Cycle yards at Weston, loading to be by J. Mehr & Son." This was signed in the name of the plaintiffs, by their purchasing agent, one Bell. The defendants wrote "accepted" under the signature of the plaintiffs, the document being in fact a proposal by the plaintiffs, and so regarded by both parties.

Under the contract so formed, the plaintiffs delivered to the defendants 10 car-loads of scrap of the descriptions stated, the last delivery being on the 27th August, 1917. On the 25th September, 1919, the plaintiffs notified the defendants that no more accumulations of scrap would be supplied.

The contention of the plaintiffs was that they were not bound by the contract to do more than sell to the defendants, at the prices stated, such scrap as, during the year from the 12th April, 1917, the plaintiffs chose to deliver to them.

When the plaintiffs brought this action for \$1,870.51, the balance due on the scrap delivered before the 27th August, the defendants counterclaimed for damages for breach of the agreement. Judgment was entered in the plaintiffs' favour on the 2nd October, 1918, for the amount of the claim, and execution stayed until the trial of the counterclaim. That trial was had, and resulted as above.

The agreement created by the defendants' acceptance of the plaintiffs' proposal was what the plaintiffs called it—a "contract." On the part of the defendants it was a contract to purchase from the plaintiffs the plaintiffs' accumulation of specified scrap produced in their works at Weston during a period of one year.

Reference to *Churchward v. The Queen* (1865), L.R. 1 Q.B. 173, 195; *Pordage v. Cole* (1670), 1 Wms. Saund. 319 *h*; *Hill v. Ingersoll Road Co.* (1900), 32 O.R. 194.