

## TRIAL.

## KNY-SCHEERER CO. v. CHANDLER AND MASSEY.

*Sale of Goods — Action for Price — Conversion of Goods — Contract — Breach — False Representations — Counterclaim.*

Plaintiffs were manufacturers and importers and wholesale dealers in surgical instruments, carrying on business in New York, and having an intimate connection of some kind with a company carrying on at Tuttlingen, in Germany, the manufacture of surgical instruments which are designated by the name of "Kny-Scheerer." Defendants were wholesale and retail dealers in surgical instruments carrying on business at Toronto. Plaintiffs' claim was for goods sold and delivered by them to defendants, \$4,171.35; for wrongful conversion by defendants of goods, \$7,825.40; and for damages for loss of profits by breach of an agreement of 31st January, 1900. Defendants counterclaimed for \$20,000 damages. The claim of plaintiffs for goods sold and delivered was admitted at \$3,635.98, subject to a question as to the price at which they should have been charged. The principal matter in dispute was the alleged agreement of plaintiffs to establish and maintain at Montreal, and, as afterwards arranged according to the contention of defendants, at Toronto, a well assorted wholesale stock of surgical instruments which should always amount in value to at least \$50,000, and from which defendants might obtain such surgical instruments as they wished to buy when and as they required them.

G. F. Shepley, K.C., and W. E. Middleton, for plaintiffs.

A. B. Aylesworth, K.C., and E. B. Ryckman, for defendants.

MEREDITH, C.J., held that some modifications of the terms of the agreement of 31st January, 1900, were agreed upon by the parties, but these were modifications only in matters of detail, and the rights and liabilities of the parties were to be determined on the provisions of that agreement so modified, and on them only, for no other agreement had been proved. It was proved that before the negotiations which resulted in the agreement of 31st January, 1900, were begun, plaintiffs had decided to open a branch of their business at either Montreal or Toronto, where they purposed keeping a stock of Kny-Scheerer surgical instruments for supplying the trade in Canada and for export to the Australian Colonies and to Mexico and certain parts of South