ents of the purchase money, or so much of it as has been paid into Court, and directing a re-sale. So much also of the Master's report as relates to the sale must also be vacated.

We have had difficulty in determining how the costs of the appeals and of the sale which has proved abortive should be dealt with. There is much to be said for requiring the respondents to pay them, as the price of the indulgence which has been granted to them, but, upon the whole, we have reached the conclusion that there should be no costs of the appeals to either party, but that the respondents should be required to pay the costs of and incidental to the abortive sale.

APRIL 23RD, 1909.

DIVISIONAL COURT.

CANADIAN RUBBER CO. v. CONNOR.

Sale of Goods—Manufactured Article—Action for Price—Defence that Article not Suitable for Purpose for which Sold—Evidence—Tests—Good Faith.

Appeal by plaintiffs from judgment of Judge of County Court of Carleton dismissing an action for the price of rubber cement sold and delivered to defendants, and in favour of defendants upon their counterclaim.

A. Lemieux, Ottawa, for plaintiffs.

D. J. Macdougal, Ottawa, for defendants.

The judgment of the Court (MEREDITH, C.J., MAGEE, J., LATCHFORD, J.), was delivered by

MAGEE, J.:—The plaintiffs sue for the price of rubber cement sold and delivered to the defendants. The defence is, that the cement was useless for the purposes of the defendants' business for which it was sold. The plaintiffs say that they did not sell it as suitable for the defendants' business, but only as being identical with a sample which they had submitted to the defendants and which the latter had tested and approved of.