

plaintiff to prove that the warranty alleged was given and that if the evidence was equal on both sides plaintiff would have to fail and the jury having returned the answer, "evidence equally balanced,"

*Held*, that the trial judge was right in accepting this finding as a finding against plaintiff and in directing entry of judgment for defendant.

*Power*, K.C., for. *W. B. A. Ritchie*, K.C., and *Sangster*, contra.

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Full Court.] RICHEY v. CITY OF SYDNEY. [Feb. 4.

*Sales—Contract—Order of goods not included in contract—Price—How determined.*

Plaintiff and defendant entered into a contract for the supply by the former to the latter of a quantity of sewer pipe of specified dimensions at an agreed price. Subsequently to the making of the contract plaintiff was requested to supply a quantity of pipe of a size not included in the contract but for which a price had been quoted in correspondence leading up to the making of the contract.

*Held*, affirming the judgment of the trial judge, that plaintiff was not bound to accept the price quoted for pipe not included in the contract but was entitled to recover the fair market price of the pipe supplied at the time the order was given.

*McDonald*, for defendant, appellant. *Mellish*, K.C., contra.

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Full Court.] LEVINE v. SEBASTIAN. [Feb. 4.

*Sale of goods—Agreement of third party to pay in certain event—Form of remedy—Action wrongly brought—Amendment.*

In an action for goods sold and delivered, plaintiff's evidence shewed that the goods in question were sold to men employed on board of a steamer of which defendant was chief steward and that defendant's undertaking, if any, was to pay for the goods if the parties to whom they were sold remained on the vessel after she cleared from St. John, N.B., or to return the goods.

*Held*, affirming the judgment of the County Court judge assuming this to be the agreement, that defendant could only be held liable in damages for breach of his contract as bailee of the goods and not in the action as brought for goods sold and delivered.