

the plaintiff alleged, he had to go into the United States market and purchase similar pelts at a cost of \$42,069.49, an advance of \$25,090; and he claimed the latter amount as damages.

The defence was that there was an embargo upon the exportation of pelts from New Zealand.

Referring to *Andrew Millar & Co. Limited v. Taylor & Co. Limited*, [1916] 1 K.B. 402, 414, 415, as to the effect of an embargo upon exportation, the learned Judge said that the contract was not annulled but suspended, and the defendants should have waited a reasonable time before repudiating the contract. Between the 5th September, 1916, and the 3rd January, 1917, the defendants could have shipped the pelts if they had applied for the consent of the New Zealand Minister of Customs. They did not use their best endeavours to obtain the consent, as it was their duty to do: *In re Anglo-Russian Merchant Traders Limited and John Batt & Co. (London) Limited*, [1917] 2 K.B. 679, at p. 685. In that case, as in this, the contract was *c. i. f.* In *H. O. Brandt & Co. v. H. N. Morris & Co.*, [1917] 2 K.B. 784, the contract was *f.o.b.* In the one case the seller must provide an effective ship—in the other, the buyer. With this consent, the defendants, except during the period of absolute refusal to grant it, could have fulfilled their contract. If they had made an application, it would not have been refused.

From the correspondence it was apparent that, while the plaintiff was insisting on the fulfilment of the contract, the defendants did not until the 3rd January, 1917, definitely repudiate it.

The defendants were liable in damages.

The measure of damages was the price which the plaintiff would have had to pay in New Zealand at the date of the repudiation of the contract by the defendants: *Brenner v. Consumers Metal Co.* (1917), 41 O.L.R. 534, 539.

There was no evidence that the plaintiff, if he had cabled to New Zealand, could not have bought pelts there after the defendants' default, much less that he could not have gone into that market and obtained the goods. This he made no effort to do.

There should be judgment for the plaintiff declaring him entitled to damages and directing a reference to the Master to determine the amount, with costs of the action and reference to be paid by the defendants to the plaintiff.