

The appeal was heard by RIDDELL, MIDDLETON, and LENNOX, JJ.

H. H. Shaver, for the defendant.

W. Laidlaw, K.C., for the plaintiff.

RIDDELL, J.:—I think the appeal must succeed.

I do not at all say that the words "due to calve" on a day named cannot import a warranty that the animal is in calf, if both parties understood it in that sense, or if the defendant knew that the plaintiff understood it in that sense, and the sale was made on that understanding. Nor could it be said that these words might not have such meaning in the business of dealing in such animals. But there is no evidence that either the defendant understood the words in that meaning or knew that the plaintiff did, or that the expression has any technical meaning. We must then decide upon the words themselves.

I think all that the words imply is similar to a definition given in the New Oxford Dictionary, vol. 3, p. 704, col. 2 (10), "reckoned upon as arriving," that is: "I expect the cow to calve on the day named; the male was admitted to her at a date which in the ordinary course of nature would, if she became pregnant, bring about parturition on that day named; I think she is pregnant, and reckon upon her having a calf upon that day."

The cow had been covered by the bull at the proper time; it is admitted that the defendant honestly thought she was in calf; the plaintiff and defendant had the same opportunity of judging of her condition; no one but a veterinary surgeon or other expert, and probably not even such person, could have told with anything like certainty whether the cow was in calf or not. I do not think there was any such warranty as is contended for. While in all such matters good faith must be kept, purchasers, if they desire a warranty of pregnancy upon which they can rely, must look for one in different terms from the present.

The appeal must be allowed with costs and the action dismissed with costs.

MIDDLETON, J., gave reasons in writing for the same conclusion.

LENNOX, J., also concurred.

*Appeal allowed.*