

In an action by plaintiffs claiming the return of the goods or their value.

Held, per RITCHIE, J.:—1. The agreement between plaintiffs and D. contemplated the trading of the goods.

2. The two transactions must be distinguished, the disposal of the waggon in the first case for goods to be delivered subsequently being different from the barter in the second case, which was a transaction not unusual in the province.

3. It was a material question in the determination of the case to ascertain whether the transaction took place in the ordinary course of the agent's business, and this not having been found there must be a new trial.

Per TOWNSEND, J.:—1. The transaction so far as the first sale was concerned was a direct breach of authority.

2. As regard the second sale the authority given to D. would only cover a barter made in good faith.

3. The findings of the jury on this point in defendant's favor being unreasonable and perverse they must be set aside and a new trial ordered.

4. The provisions of the Factors' Act, c. 11. s. 2, were inapplicable under the circumstances stated.

J. J. Ritchie, and *F. L. Milner*, for appellant. *W. E. Roscoe*, *K. C.*, for respondent.

Province of British Columbia.

SUPREME COURT.

Martin, J.]

BIRD v. VIETH.

[July 31, 1900.

Costs—Security for, by foreign plaintiffs—Appeal.

Summons for release of an undertaking which had been lodged in Court as security for the costs of the action by plaintiffs who were resident outside the jurisdiction. The action had been tried and judgment given for plaintiffs and defendants had given notice of appeal to the full Court.

Held, that the security should stand pending the appeal.

A. D. Crease, for plaintiffs. *Duff*, for defendants.