Clute, J., in a written judgment, after reviewing the evidence, said that the view taken by the learned trial Judge was sufficiently supported by the evidence, and was more probable than the plaintiff's statement. Upon the evidence it was wholly improbable that the defendants purchased the full amount which the plaintiff said he sold them. The finding of the trial Judge ought not to be disturbed.

Upon the question of costs, the learned Judge referred to the Judicature Act, R.S.O. 1914 ch. 56, sec. 74 (1); Harris v. Petherick (1879), 4 Q.B.D. 611; Forget v. Ostigny, [1895] A.C. 318; Fielden v. Cox (1906), 120 L.T.J. 521; Re Rotch (1909), 127 L.T.J. 617; Bew v. Bew, [1899] 2 Ch. 467; Estcourt v. Estcourt Hop Essence Co. (1875), L.R. 10 Ch. 276; Vipond v. Sisco (1913), 29 O.L.R. 200; Holmested's Jud. Act, 4th ed., pp. 251-253; and said that the learned trial Judge having found, upon sufficient evidence, that the plaintiff did not intend to sell nor the defendants to buy the quantity of glue that was stored in a certain warehouse, the price of which formed much the larger part of the plaintiff's claim, it followed that the plaintiff had failed as to that which was the real bone of contention between the parties. There could be no doubt that the trial Judge intended to exercise and did exercise a discretion in regard to the costs. The circumstances were peculiar. The litigation was unnecessary, caused wholly by the plaintiff. There was no ground for interfering.

The appeal should be dismissed with costs.

Sutherland, J., agreed in the result, for reasons stated in writing, in which Mulock, C.J.Ex., agreed.

Kelly, J., also agreed in the result, for reasons stated in writing.

Appeal dismissed with costs.