

Ct. Appeal.]

NOTES OF CANADIAN CASES.

[Ct. Appeal.]

liberty to shew by parol evidence the fact of such recommendations, though the written memorandum of sale and purchase made no reference thereto.

Per BURTON, J. A., and CAMERON, C. J.:—That defendant's language was mere commendation of the machines and did not amount to a warranty.

The jury at the trial rendered a verdict for \$200 more than the plaintiff claimed as damages which the Divisional Court refused to interfere with. On appeal to this Court, the ruling of the Court below was sustained.

MacLennan, Q.C., for the appellant.

Lount, Q.C., for the respondent.

CAMERON V. BICKFORD.

Conflicting evidence—Reserving finding of judge.

The learned judge who tried the case, in which the evidence was conflicting and irreconcilable, rested his conclusion in favour of the defendant on the documentary evidence and the probabilities arising in the case. This Court, while not differing from the judge as to the credibility of the parties or their witnesses, having come to a different conclusion on the whole evidence allowed the appeal and reversed the judgment of the Court below.

McCarthy, Q.C., and *Moss*, Q.C., for the appellant.

S. H. Blake, Q.C., and *MacLennan*, Q.C., for the respondent.

MIDLAND RAILWAY V. ONTARIO ROLLING MILLS.

Judgment of the Court below, 2. O. R. 1, was affirmed.

J. K. Kerr, Q.C., for the appellants.

Osler, Q.C., and *Laidlaw*, for respondents.

MALCOLMSON V. HAMILTON PROVIDENT AND LOAN SOCIETY.

Verdict of jury.

The father of the plaintiff applied to the defendant company for a loan of \$2,500 secured by land valued by the company's appraisers at \$3,500. In answer to certain printed questions put to the applicant, he

stated himself to be the owner of certain horses, cows, sheep and other stock, the plaintiff being present with his father at the time of making the application, although he swore in his evidence that he was not aware of the answers given by his father as to his personal assets, stock, etc. The defendants subsequently sued and obtained execution against the father, under which they seized certain live stock in the possession of the son, who had been residing apart from his father, and from whom, at that time, he had purchased several of the cattle, etc., and had ever since continued to feed and care for the cattle, etc.

In an action brought by the son against the company, the jury found in favour of the claim of the plaintiff, which verdict the Judge of the County Court refused to set aside.

On appeal, this Court refused to disturb such ruling of the County Judge, although, had the verdict been in favour of the defendants, this Court would have been better satisfied; the question being one proper for the decision of the jury.

Crerar, for the appeal.

Wm. Bell, contra.

COOK V. PATTERSON.

Purchase of hay—Shrinkage—Loss by hay spoiling—Decision on the merits—Reference as to damages.

The plaintiff contracted with the defendants for the purchase of a quantity of hay amounting to about 2,270 tons which was to be delivered at certain points, from which the plaintiff was to ship it to the New York market, and which was to be subject to examination before shipping. The plaintiff, without examination of the hay, forwarded it to New York, whereupon the agents of the plaintiff offering the same for sale, it was found to be greatly damaged by having become musty, thereby materially reducing its market value; and the weight had shrunk to the extent of about 200 tons. In an action to recover for the shortage and defective quality, the plaintiff asked for a reference as to damages, but the judge who tried the case refused the reference and entered judgment for the defendants.

Held, that when the evidence is contradic-