

Action to recover \$22,550 for woollen yarn shipped from the plaintiffs' factory at Peterborough to the defendants at Sarnia between the 9th and 16th December, 1918.

There was no dispute as to either the quantity or the price of the yarn shipped on and between the dates stated.

The defendants paid into Court \$13,530, being in full for all the shipments of yarn up to and including that of the 12th December.

The defendants, by their statement of defence, alleged that, on receipt of the invoice for the shipment of the 12th December, they notified the plaintiffs that they would accept no more yarn. Notice of this cancellation was not received by the plaintiffs until the evening of the 16th December. In the meantime, on the 13th, 14th, and 16th, shipments had been made to the value of \$9,020.

The wool refused was afterwards sold by an arrangement made between the parties without prejudice to their respective rights.

The defendants asserted that the cancellation was as of right, owing to the failure of the plaintiffs to fulfil the terms of the contracts existing between them and the plaintiffs; and the defendants counterclaimed for \$15,000 damages for breach of contract.

The plaintiffs did not dispute the defendants' right to cancel the order as to shipments not made when the notice was received on the 16th December, but said that deliveries made before that time must be paid for.

The action and counterclaim were tried without a jury at Peterborough.

R. C. H. Cassels and J. E. L. Goodwill, for the plaintiffs.

A. Weir and A. I. McKinley, for the defendants.

LATCHFORD, J., in a written judgment, said that the yarn was shipped under three orders, two of the 6th October, 1917, and one of the 16th October, 1917, for 1,550, 4,000, and 4,000 bundles respectively. Under the orders of the 6th October the yarn was to be shipped as soon as possible. Shipment under the third order was to begin on completion of the former orders and to proceed at the rate of 600 spindles a week. Shipments of about 600 spindles a week were made during October. In November deliveries declined to 1,620 spindles, and in December to 740.

The defendants realised that the third order could not be completed at anything like the rate of 600 spindles a week. On the 7th January, 1918, they paid for the shipments made in