

WILSON *et al.* v. THE WINDSOR FOUNDRY CO. 1901

Contract—Sale of goods.—Evidence to vary written instrument—Admission of evidence. *Feb. 27, 28.
*May 13.

APPEAL from a judgment of the Supreme Court of Nova Scotia *en banc* (1), affirming the judgment of Townshend J. at the trial (2), which dismissed the plaintiffs' action with costs.

The plaintiffs (appellants), carried on business at Montreal under the style of "A. R. Williams & Co.," and brought the action against the respondent for the price of an engine, ordered by respondents in writing, and other machinery supplied in connection with repairs to the foundry, amounting in all, according to the amended statement of claim to \$495.91. The order was given through the plaintiffs' agent W. The principal defence to the action was that the company supposed and was led to believe that they were dealing with a company carrying on business in Toronto as "The A. R. Williams Machinery Company (Limited)," with which it had previous dealings, and which, at the time, had in its possession machinery belonging to the defendant of the value of \$780 which it was agreed with W. should be accepted in payment for the machinery ordered. The trial judge found that the business carried on in Montreal was distinct from that carried on in Toronto, but that at the time the order was given defendant believed it was contracting with the Toronto company, and that there were surrounding circum-

*PRESENT :—Taschereau, Gwynne, Sedgewick and Girouard JJ.

(Mr. Justice King was present at the argument but died before judgment was delivered.)

(1) 33 N. S. Rep. 21.

(2) 33 N. S. Rep. 22.

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stances to lead to the belief that the business carried on in Montreal and Toronto were one and the same. He held that the plaintiffs were bound by the bargain made with W., and, on the ground that it was not inconsistent with the written agreement to prove that payment was to be made otherwise than in cash, he received evidence of the agreement relied on by the defendant.

After hearing counsel for the parties the court reserved judgment, and on a subsequent day dismissed the appeal for the reasons given in the court below by the Chief Justice of Nova Scotia and by Townshend J. in the trial court. Gwynne J. dissented from the judgment rendered by the majority of the court and was of opinion that the appeal should be allowed with costs and the plaintiffs' action maintained.

Appeal dismissed with costs.

Russell K.C. for the appellants.

Roscoe K.C. for the respondent
