

1918
 Dec. 9
 Dec. 23

ECKERT v. LONDON ELECTRIC RAILWAY CO.
 ON APPEAL FROM THE APPELLATE DIVISION OF THE
 SUPREME COURT OF ONTARIO.

Contract—Sale of Copper—Quantity—Evidence.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario (1), reversing the judgment at the trial in favour of the defendant (appellant).

The respondents sued for the price of copper wire sold to appellant who counterclaimed for damages on account of a deficiency in the quantity agreed upon. The contract was verbal, the appellant offering to buy and the respondents to sell the wire the latter had on hand, which was represented to be about seventy tons. It turned out that respondents only had a little over fifty tons and the appellant claimed damages for breach of the contract.

The trial judge held that the contract was for a specific quantity, but his judgment was reversed by the Appellate Division, which held that on the evidence respondents only agreed to sell the quantity they had on hand.

The Supreme Court of Canada, after hearing counsel and reserving judgment, dismissed the appeal.

Appeal dismissed with costs.

Tilley K.C. for the appellant.

D. L. McCarthy K.C. for the respondents.