

1928
 *May 15.
 *May 16.

WETTLAUER BROTHERS LIMITED }
 (DEFENDANT) } APPELLANT;

AND

ROBERT ELDER CARRIAGE WORKS }
 LIMITED (PLAINTIFF) } RESPONDENT.

ROBERT ELDER CARRIAGE WORKS }
 LIMITED (PLAINTIFF) } APPELLANT;

AND

SNOW MOTORS INCORPORATED }
 (DEFENDANT) } RESPONDENT.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME
 COURT OF ONTARIO

*Contract—Action against two defendants for price of goods sold and
 delivered—Question as to which defendant purchased—Find-
 ings of fact.*

APPEALS by the defendant Wettlaufer Brothers Limited and by the plaintiff from the judgment of the Appellate Division of the Supreme Court of Ontario (1).

The plaintiff sued the defendants, Wettlaufer Bros., Ltd. and Snow Motors Inc., for the price of goods sold and delivered. The decisions turned upon findings of fact. At the trial Riddell J. held, upon the evidence, that, as to most of the items, the defendant Snow Motors Inc. was liable as being in fact the purchaser of the goods, and the plaintiff recovered judgment against it for \$1,973.71, and against the defendant Wettlaufer Bros. Ltd., in respect of certain items, for \$224.79, and against the defendants for costs. The defendant Snow Motors Inc. appealed from that judgment, and the plaintiff also appealed, claiming that it was entitled to judgment against the defendant Wettlaufer Bros. Ltd. for \$2,198.50, and, in the event of success of the appeal of the defendant Snow Motors Inc., it was entitled to judgment against Wettlaufer Bros. Ltd. for \$2,198.50. The Appellate Division (1) allowed the

*PRESENT:—Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith JJ.

(1) [1927] 33 Ont. W.N. 199.

appeal of the defendant Snow Motors Inc., and also allowed the plaintiff's appeal, and directed that the action be dismissed as against the defendant Snow Motors Inc. and that the plaintiff recover from the defendant Wettlaufer Bros. Ltd., the sum of \$2,198.50, and that the defendant Snow Motors Inc. and the plaintiff each recover its costs of action from the defendant Wettlaufer Bros. Ltd., and that the plaintiff recover from the defendant Wettlaufer Bros. Ltd. its costs of appeal, and that the defendant Snow Motors Inc. recover from the defendant Wettlaufer Bros. Ltd. its costs of appeal. The defendant Wettlaufer Bros. Ltd. appealed to the Supreme Court of Canada, and the plaintiff also appealed to the Supreme Court of Canada against the judgment of the Appellate Division in so far as it relieved the defendant Snow Motors Inc. from its liability to the plaintiff adjudged by the trial judge. Leave to appeal was granted to the appellants by the Appellate Division.

1928
 WETTLAUFER
 BROS. LTD.
 v.
 ROBERT
 ELDER
 CARRIAGE
 WKS. LTD.
 —
 ROBERT
 ELDER
 CARRIAGE
 WKS. LTD.
 v.
 SNOW
 MOTORS
 INC.
 —

After hearing argument by counsel for all parties, judgment was reserved, and on the following day the Court orally delivered judgment allowing both appeals with costs.

Appeals allowed with costs.

R. S. Robertson K.C. for the defendant Wettlaufer Brothers Limited.

Gordon Waldron K.C. for the plaintiff.

L. Ramsey for the defendant Snow Motors Incorporated.
