

1918

DE FELICE v. O BRIEN.

*Nov. 27.
*Dec. 23.ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.*Sale—Acceptance—Defects—Destruction of the goods.*

APPEAL from the judgment of the Court of King's Bench, appeal side (1), affirming the judgment of the Superior Court, District of Montreal, and dismissing the appellant's, plaintiff's, action.

The appellant is a manufacturer of cigars and ordered from the respondent the delivery of tobacco which was accepted. The appellant then made 70,000 cigars. Later on his clients complained that the tobacco did not burn and a certain part of these cigars were returned to the appellant, of which fact he advised the respondent. On the 26 May, 1916, the appellant offered to return to respondent 40,000 out of the 70,000. On the 17th June, the appellant advised the respondent that these cigars had been destroyed. On the 18th July, the appellant took this action in damages for \$4,879.

The trial court dismissed the action; and the Court of King's Bench affirmed this judgment.

On appeal to the Supreme Court of Canada, after hearing counsel on behalf of both parties, the court reserved judgment, and, on a subsequent date, dismissed the appeal with costs, the Chief Justice and Mignault J. dissenting.

*Appeal dismissed with costs.**Edmond Brossard K.C.* for the appellant.*Kavanagh K.C.* and *J. H. Gérin-Lajoie* for the respondent.

*PRESENT:—Sir Louis Davies C.J. and Idington, Anglin, Brodeur and Mignault JJ.