

1912

BIGELOW v. GRAHAM.

*Oct. 17, 18.

*Oct. 29.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Sale of goods—Designated quality—Fraud on purchaser—Damages—
Loss of market.*

APPEAL from a decision of the Supreme Court of Nova Scotia(1), affirming the judgment at the trial in favour of the plaintiff (respondent).

The respondent, Graham, contracted for the purchase from appellant of a quantity of apples for the purpose of selling them on the Christmas market in England. The apples were to be graded as Nos. 1 and 2 and delivered at Wolfville, N.S., before Dec. 1st, 1908. They were delivered accordingly to the number of 584 barrels and sent to St. John, N.B., for shipment. At St. John the Dominion fruit inspector opened some of the barrels and condemned the grading so they had to be repacked at considerable expense and such delay that the intended market was lost. In the repacking some of the fruit was graded as No. 3 and some rejected as worthless culls.

The respondent brought action to recover the cost of repacking, damages for apples not up to the specified quality and loss of profit. He recovered at the trial on all three heads which the full court affirmed. The defendant appealed to the Supreme Court of Canada against the award of damages for loss of profit only.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

(1) 46 N.S. Rep. 116.

After hearing counsel for the respective parties the court reserved judgment and, on a subsequent day, dismissed the appeal with costs.

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Appeal dismissed with costs.

Mellish K.C. for the appellant.

W. N. Tilley for the respondent.
