

6 SA WOOD TURNING MILLS (PTY) LTD V PRICE BROS (PTY) LTD

## SA WOODTURNING MILLS (PTY) LTD VS PRICE BROS (PTY) LTD

FACTS: ↓ appellant contracted with ↓ respondent to print a 1000 catalogues, ↓ photographs & descriptive matter. Supplied in ↓ form of a dummy catalogue. ↓ respondent only delivered 890 catalogues which contained certain patent defects in printing. ↓ appellant accepted delivery of ↓ catalogues & distributed them amongst its customers. ↓ appellant refused to pay the respondent for ↓ full contract price. ↓ respondent having successfully sued ↓ appellant for ↓ costs of ↓ catalogues delivered, in an appeal it was contended ± respondent was only entitled to a quantum meruit.

COURTS DECISION: Held that ↓ contract was one of purchase & sale. Held further ↓ ↓ appellant could therefore not rely on ↓ equitable relief of a quantum meruit. Held further ↓ since ↓ appellant failed to cancel ↓ contract & claim damages as he was entitled to do so ↓ appeal should be dismissed. Once it was established ↓ contract was one of purchase & sale ↓ quantum meruit was not open to ↓ appellant. When ↓ appellant received ↓ catalogue he could clearly have cancelled ↓ contract & claimed damages. But ↓ fact ± ↓ appellant did not cancel ↓ contract & took delivery of ↓ catalogues & delivered it to his customers, meant ↓ he could no longer cancel ↓ contract.

✓ A claim based on quantum meruit applies to locatio conductio operis

Neither was ↓ *laedilitian* action or *actio quanti minoris* available. For ↓ defects were not latent but clearly observable by ↓ appellant @ ↓ time of delivery.