

computed Mr. Poirier might have been found to have complied with his contract. In my opinion this method of arriving at the amount due is not sufficient to prove the claim put forward.

The contract calls for a reduction of \$1.50 per ton from the contract price. There is no provision for payment for excess of space occupied by any particular bale. If after the lapse of time and what has taken place, assuming the contention of the Department as to the meaning of clause 3 to be in their favour, I think they would have to prove the truth of their allegations by evidence stronger than that adduced before me. I think the Crown have failed to support their counterclaim, and the counterclaim should be dismissed.

That portion of the counterclaim referred to in section 5 of the counterclaim is as follows:—

“In the final settlement of the accounts of the suppliant with the Department of Agriculture the account of the former was on the 12th August, 1902, credited with 43,633 pounds of hay at \$14 a ton amounting to \$305.43, being in respect of a carload of hay referred to in paragraph 13 of the petition of right, and alleged to have been delivered by the suppliant but which the Attorney-General claims was never received by the respondent,” has been dealt with in the judgment on the main case and was abandoned.

The result of the whole case is that the suppliant Poirier succeeds as to the sum of \$235.76. He also succeeds in respect to the claim put forward by the Crown in respect to the 43,633 pounds of hay referred to in the 23rd clause of the defence. He fails in regard to the damages claimed for the wrongful conversion of his hay amounting to a sum over \$1,000. The defence fails entirely as to their counterclaim. To adjust the different items that would be allowed for costs to and against the suppliant, and to or against the respondent, will be difficult. I think if the suppliant is allowed \$250 for his costs it will be about the correct amount. Judgment will therefore be entered for the suppliant for the sum of two hundred and thirty-five dollars and seventy-six cents, and for two hundred and fifty dollars costs. The counterclaim is dismissed, no further costs to or against the respondent.