The defendants make the further contention that "track Owen Sound" means that the cars were to be provided by the plaintiff in which to receive the wheat.

In *Marshall* v. *Jameson,* 42 U. C. Q. B. 115, a case where the contract was for wheat f.o.b. at Clinton, it was held to be the duty of the buyer to provide the cars, and that the defendant not having done so within a reasonable time could not recover in an action against the seller for non-delivery of the wheat.

In this case while the terms of this contract are not identical, it seems to me that the case applies, and that it was the duty of the plaintiff to have provided cars in which to receive his wheat. He paid the first draft on November 7th and took delivery later on the 1,000 bushels thereunder. He permitted the remaining 1,000 bushels to be left in the elevator from that date until the time of the fire, upwards of a month, when at any time he had a right, under the order in his possession, to get the wheat.

He paid the second draft on the fourth of December and allowed the 2,000 bushels paid for by it to remain in the elevator from that date till they were destroyed by fire on the 11th of December. I think in each case this delay was unreasonable on his part and that the grain being destroyed he must be at the loss thereof.

If defendants had meantime sold to other persons all the wheat of the kind in question, except the 3,000 bushels, and they had taken delivery thereof, the 3,000 bushels would alone have been left in the elevator. Would not that have been his wheat? His wheat was part of the whole that was there. All was destroyed and so his was destroyed. It was destroyed because he had delayed to take delivery for an unreasonable time.

The defendants had their wheat and other grain in the elevators at Owen Sound insured under what is called a "blanket policy." The practice was, as between them and the insurance company, that from day to day the quantity of grain going out of the elevator was reported, and at the end of the month the premiums were settled and adjusted on the basis of the varying amounts in the elevator during the previous month. The evidence of the defendants at the trial was to the effect that the insurance on each of the 2,000 bushels in question, after payment of the drafts, was taken out of the benefit of the insurance and the quantity of grain written off their own books as on completed sales.