

REPORT OF THE BOARD OF TRADE IN THE MATTER OF J. B. MCKAY & Co.

1. That at various times between December, 1886, and April, 1887, they sold to several grain firms quantities of peas, wheat and barley delivered f. o. b. at Cavanville station, and by their express instructions verbally and in writing, the cars were billed several bushels each (ranging from two to ten bushels) in excess of the quantities loaded therein, and payment obtained for the full quantity the several cars were said to contain.

2. That the said McKays sold to George A. Chapman & Co. a quantity of marrowfat or black eyed peas, and by their express instructions verbally or by letter to their agent, a large quantity of an inferior quality or small peas was loaded in the cars along with the marrowfat peas, and payment was obtained therefor as if they were all marrowfat peas.

3. That in loading a quantity of barley for export the said McKays gave instructions in writing to their agent at Cavanville to load No. 2 barley, and to put in a quantity of No. 1 barley on the top and at the doors of the cars for the purpose of deceiving those who were buying the barley as to its real quality, etc.

In explanation and defence of these charges the said McKays denied any intention of defrauding. They alleged that the cars were underloaded and overbilled for the purpose of testing the accuracy of the measure made by the various elevators which the grain reached, and not for the purpose of obtaining payment for that for which they had not given value, and that they meant to refund the amounts overpaid so soon as the claims were made and the correct weights at the elevators established. They contended it was customary in the trade where the marrowfat peas were of an extra good quality, and perfectly justifiable for the purpose of bringing them to a merchantable standard, to mix a certain quantity of small peas with them, and that in so doing they were guilty of nothing wrong or unusual, and that there was no intent to deceive or defraud. And so in the mixing of the two qualities of the barley, they only did what is customary in the trade, and for the purpose of creating a good impression at the outset on the minds of those unloading the barley in the foreign market, and not with intent to deceive or defraud, and that in all these matters they have not been guilty of conduct unbecoming members of this board. Admitting for the moment the correctness of the plea that it was for the purpose of a test, and only a test, that the cars were loaded short, and that payment was obtained for a larger quantity of grain than was known to have been delivered in each car, the council does not hesitate to affirm that a most unusual and objectionable method was adopt-

ed for making this test, and the Messrs. McKay must not be surprised if the purity of their motives is called in question and a construction placed upon their course not at all creditable to them.

They had their doubts, it appears, as to the accuracy of the weighing and measuring done by the elevators and thought there was reason to believe shortage of some five bushels was claimed on every carload, whether the same was under or overloaded. To test this may have been a perfectly proper thing, and an opportunity might very well have been taken when they were exporting their own grain, but if the test were to be made with grain sold to others, the consent of the owners of the grain ought first of all to have been obtained; they should have been made privy to the experiment, and payment should not have been exacted from them for that which the McKays knew perfectly well had been wilfully withheld, and the council does not hesitate to say that such is not a practice in the trade, and that the same could not fail to produce disputes and annoyances, and to cast doubts on the uprightness and honesty of any who engage in it. But however plausible the plea of the "test," the evidence before the council does not admit of its acceptance as entitling the McKays to an acquittal on the charge of conduct unbecoming members of this board. They have stated that the shipping of peas is a new business to them in which they have had no experience. The suggestion of the test was made to them by an employé named Hunt, who was afterwards dismissed, and with whom they had a quarrel, but Hunt, according to the evidence, only asked for permission to make a test with one car. The whole correspondence with Hunt, wherein instructions are given him to load one lot after another short, does not bear out the plea of the test as the sole motive. In none of these letters is the test even mentioned. In invoicing and obtaining payment for a quantity of grain underloaded, the absence of all sensitiveness on the McKays' part when mention of shortages was made by one after another of the purchasers of the short grain, their neglect, delay and refusal to refund the amount overcharged, are all against the test theory, and before restitution could be had, four separate and distinct cases of claim have to be referred to the Board of Arbitration, causing loss of valuable time, annoyance and costs. If claims were made for more shortages than the McKays were ready to admit, it was no more than might have been expected. If underloading and overbilling took place at one point where they were shipping it was presumptive evidence it was going on at other points, and that this was the probable way of accounting for short-