

partment is relied upon under the Canada Evidence Act as proof. These books are compiled from the slips prepared by Lieutenant Bell. Lieutenant Bell was appointed for the purpose of seeing that the various contracts were lived up to. He states in his evidence that all the hay passed through his hands. He is asked:

“Q. Did you immediately report the measurements of all the bales of hay that you measured there in St. John? A. I did. That is to say, after each day's work the actual figures were returned to Ottawa on a slip which was provided for the purpose. The slip bore the number of each car, the number of the bales tested in the car, and the number of bales that were eventually shipped from the car.

“Q. The record in Ottawa was the record of your daily reports? A. Yes, actually.”

His evidence goes no further than the record produced from the book. I find nothing in the contract which permitted Lieutenant Bell to test a certain number of bales and to conclude that because this particular number of bales occupied proportionately more space than that provided by the contract, therefore it was to be assumed as against the suppliant, Mr. Poirier, that the balance of the bales making up the ton of hay measured the same as those bales tested. The contract provides for an excess per ton. In my opinion if the Department had intended or were entitled to charge this sum of \$1.50 per ton, they should have had a proper measurement, not jumping at it in the manner in which Lieutenant Bell performed his work.

Referring to the statement, exhibit “K” a copy of the book—take for illustration Number 1—Car No. 18198; shipping date November 4th; net weight of hay accepted 43,629 pounds; number of bales tested, five; measurement per cubic feet, seventy-three; reduction per ton \$1.50; and reduction per carload \$32.72. A bale of hay is said to contain 100 pounds, a ton of hay 2,000 pounds. The 43,629 pounds being the weight of the hay accepted, amounts to almost 22 tons. Lieutenant Bell tested out of these 22 tons five bales, or if it were averaged by the ton about 25 pounds of hay per ton. It would probably have turned out, or at all events might have turned out that if he had made a proper examination that while a considerable number of the bales might have been in excess of the 70 cubic feet, others might have been under, so that when the whole thing was