cover; that defendants were not protected by 42 Vict. c. 9, sec. 17 (D.), and sub-sections, for to come within it the goods must remain in the defendants' possession for at least a year, unless the tolls have been demanded from the persons liable, and payment refused or neglected for six weeks after demand; and though sub-section 3 says nothing of demand, the whole section must be read together, which shewed a demand was required; that the post card was not a sufficient demand; that there was no breach in not stopping at Winnipeg, as the contract to stop only applied to car 6,263; and that the plaintiff was entitled to recover as damages the value of the oats at Brandon at the time of conversion.

F. Arnoldi, for the plaintiff.

W. Nesbitt, and *P. McPhillips*, for the defendants.

MEAD v. O'KEEFE.

Partnership—Dissolution—Good will.

On the 3rd April, 1882, a deed of partnership was executed by the defendants O. and H. and by M., as malsters and brewers in Toronto for three years. By Clause 20, O., for $25,000, sold and disposed of to H. and M., all his interest in the good will of the firm, etc., theretofore existing between himself and G. M. H. as brewers, etc., as also that which he would be entitled to on the expiration or sooner determination in the partnership then formed, and in the meantime to fully initiate and instruct H. and M. in the business; and he assigned to them all his right, title, interest, claim and demand of in, to or out of the good will of the said business and partnership heretofore existing and carried on by O. & Co., and also in the good will, etc., and covenanted to execute a good and sufficient deed to assign and transfer same. Then followed provisions for O. entering into partnership with either both H. and M. on the determination of the existing partnership, but if not, O. should retire and receive the value of his share, but nothing further for the good will, and he covenanted not to carry on a similar business, etc. Clause 19 provided for the accounts being taken on the expiration or sooner determination of the partnership, and the partners paid the value of their shares. By Clause 29, if either H. or M. should retire from the firm under Art. 2, or be compelled to leave under Art. 3, he should not receive anything for good will. Art. 3 provided for dissolution upon breach or non-observance of any stipulation in certain of the Articles upon notice in writing being given therefor, and the partner receiving notice should be considered as quitting the business for the benefit of the other partners. Subsequently M. misconducted himself in the said business, when O., acting for himself and H., informed M. that he must leave, and the following paper was drawn up: "Notice is hereby given that the partnership heretofore existing between the undersigned as brewers, etc., has this day been dissolved by mutual consent. Messrs, O. and H., who will continue the business, are authorized to collect all debts due to the late firm, and will meet all liabilities." This was signed by O., H. and M. Under this was written: "Referring to the above, the undersigned have this day entered into partnership as brewers, i.e., under the style of O. & Co., who will continue the business as formerly." This was signed by O. & H. A suit was brought by E. M., the assignee of M., under an assignment to her, and a decree was made for an account, but not as to the good will, as it was held this was not covered by the assignment. The good will was then assigned to plaintiff, and this action brought to recover the value thereof.

Held, that the plaintiff, under the circumstances more fully set out in the case, was entitled to recover.

Maclennan, Q.C., and *Osler*, Q.C., for the plaintiff.

Moss, Q.C., and *G. T. Blackstock*, for the defendants.

WILSON v. RYKERT.

Appropriation of payments—Statute of Limitations.

Appropriation of payments are to be applied (1) as the debtor directs at the time of payment; (2) when no direction by debtor, then as the creditor directs; (3) when neither makes any direction, then the law will apply it to the older debt as may be just.

The defendant was indebted to the plaintiff and gave six promissory notes therefor, which fell due in 1871. The interest was paid up to August, 1878. Thereafter three payments were made; two specially on account of interest, and the third without any appropriation.