

the meaning of the words "track Owen Sound," was intended to be and is on the basis of track Owen Sound, all charges paid. It could not well be contended by plaintiff, I think, that if he left the grain in the elevator thereafter for any period, and there were further charges, he could compel defendants to pay the same.

It was argued by counsel for defendants that the plaintiff had in the case of previous sales paid the additional elevator charges, and in support of this a reference was made to his examination for discovery. This reference was objected to by plaintiff's counsel, as the said examination had not been made part of the plaintiff's case.

The course of dealings previously, the terms of the orders and the course of dealing under the orders in question, I think bear out the construction of the contract placed on it by the defendants. After he received the orders the plaintiff applied for the grain purchased by him and for cars in which to receive it when and as he wanted it without reference to defendants at all. They and he treated the grain sold after the drafts were paid and the orders on the C. P. R. agent taken as the plaintiffs. In some cases it has been held that if the bailee of the commodity in question has not been notified the property does not pass.

Reference to *Coffey v. Quebec Bank*, 20 U. C. C. P. 110, Gwynne, J., 124—In that case also at p. 116, Hagarty, C.J., says: "As I understand the course of decisions in our Courts, it has been considered that the usage of the trade does not require in wheat contracts that delivery must be made 'grain for grain,' that delivery of the stipulated quantity of the article of the quality and character bargained for, generally satisfies the contract."

In this case the defendant did not directly give such notice of the sales to the plaintiff, to those in charge of the elevator. It is clear, however, that the plaintiff must have shewn the order as to the first 2,000 bushels to the elevator people when receiving the 1,000 bushels part thereof from them. And it can certainly be considered that as to this 2,000 bushels there was a notice brought to the attention of the bailee sufficient to cover the case. Both plaintiff and the elevator people acted on that order.

I have come to the conclusion, and I find that the intention of the parties, when the drafts were paid and the orders on the elevator taken by the plaintiff, was that the property in the wheat should pass to the plaintiff.