

and holding lands for the purpose of its business in the Province of Ontario by virtue of the Mortmain and Charitable Uses Act. Such incapacity and prohibition do not arise by reason of its not being licensed under the said Act; though, if it were licensed, its incapacity would be removed.

Judgment accordingly. No costs.

KELLY, J.

AUGUST 23RD, 1917.

GEROW v. HUGHES.

Contract—Sale of Flour—Failure to Deliver Full Quantity—Monthly Deliveries—Delivery “as Required”—Postponement of Time for Delivery—Acquiescence—Entire Contract—Breach—Damages—Rise in Price of Flour.

Action for damages for non-delivery of flour by the defendant, a flour-dealer, to the plaintiff, a baker.

The action was tried without a jury at Belleville.

E. G. Porter, K.C., and W. B. Northrup, K.C., for the plaintiff.
W. N. Tilley, K.C., and E. J. Butler, for the defendant.

KELLY, J., in a written judgment, said that the contract, made on the 14th October, 1915, was for 1,000 bags of Rose flour at \$2.70 and 1,000 bags of Queen flour at \$2.45, “delivery as required up to the 1st November, 1916;” and it contained a reference to 35 bags per week. If the contract meant that delivery would be at the rate of 35 bags per week throughout the period from the date of the contract to the 1st November, 1916, the whole amount contracted for could not have been delivered by the latter date. At that rate of delivery, there would at the end of the term have remained undelivered about 100 bags, delivery of which could not be enforced unless the purchaser had the right, then or later, to demand delivery of the remainder, which was considerably in excess of the maximum amount for any one week.

But the contract, though containing an indefinite mention of 35 bags a week, was definite in stating that the sale was of 2,000 bags, “delivery as required up to the 1st November, 1916.” That result could be arrived at only by a delivery of more than 35 bags in some week or weeks, or by delivery at the end of the