

Winding-up Act, to recover the proceeds of 500 cases of butter sold by defendants.

I. F. Hellmuth, K. C., and J. R. Meredith, for plaintiffs.
F. Arnoldi, K. C., for defendants.

TEETZEL, J.:—Defendants claim 401 cases under 5 warehouse receipts dated respectively 21st and 26th September, and 4th, 19th, and 20th October, 1905, issued by the J. A. McLean Produce Company Limited, warehouse-keepers, to the Toronto Cream and Butter Company, and indorsed to the defendants in the name of that company by W. A. Clark, manager, on 23rd October, 1905.

On 20th October, 1905, Clark warehoused with the McLean Company 45 cases, and on 21st October, 54 cases, which comprise the other 99 cases in question, but no warehouse receipt was ever issued for them.

The Toronto Cream and Butter Company, which I will hereafter refer to as the unlimited company, was a trading name used by Mrs. Annie E. Clark, and the business was managed by her husband, W. A. Clark, under power of attorney.

By Ontario letters patent dated 5th April, 1905, the plaintiff company were incorporated, one of the objects being "to acquire and assume and continue as a going concern the business hitherto carried on under the firm name of the Toronto Cream and Butter Company." The capital stock was fixed at \$60,000, \$20,000 of which was to be 8 per cent. preference shares.

By agreement dated 1st June, 1905, between Mrs. Clark, carrying on business under the said trading name, of the first part, and the plaintiff company, of the second part, the former agreed to sell and the latter agreed to purchase all the property, assets, rights, credits, and interests of the party of the first part, including all plant, machinery, books, contracts, etc., together with "the goodwill of the said business, with the exclusive right to use the name 'Toronto Cream and Butter Company' as part of the name of the company, and to represent the company as carrying on such business in continuation of the vendor's firm and in succession thereto, and the right to use any words to indicate that the business was carried on in continuation of or in succession to the said firm," etc.