

and there was a deficiency of \$156, which the defendants had to pay, and for which they counterclaimed. The plaintiff had notice of, and carried on his trading account with the defendants under, the terms of a written memoradnum, which gave the defendants the right to sell, in such circumstances, without notice: see *Nelson v. Baird* (1915), 22 D.L.R. 132.

In any event the plaintiff failed to meet the demands for margins made by the telegram sent to him on the 28th August.

He telegraphed to the defendants on the 30th August, but did not in his telegram repudiate the 50 bushels' transaction. He knew of it, and his telegram should be read as a confirmation of that purchase; and if, at that time, he had furnished the requisite margin, the corn might have been repurchased at a lower price than that which he had agreed to buy it at originally. The loss he suffered, if any, was occasioned by his taking the unjustified position, indicated by his subsequent letter of the 8th September, that the 50 bushels' purchase was not authorised by him.

• The plaintiff's action failed on the merits.

The learned trial Judge was of opinion that the transactions disclosed in evidence were within the prohibitions of sec. 231 of the Criminal Code, and that that was the effect of the decision in *Beamish v. James Richardson & Sons Limited* (1914), 49 S.C.R. 595. The learned Justice of Appeal was unable to agree in either of these conclusions.

Reference to *Pearson v. Carpenter* (1904), 35 S.C.R. 380; *Forget v. Ostigny*, [1895] A.C. 318; *Buitenlandsche Bankvereeniging v. Hildesheim* (1903), 19 Times L.R. 641; *Halsbury's Laws of England*, vol. 27, pp. 258-260.

The learned trial Judge dismissed both action and counterclaim; there was no cross-appeal; and the plaintiff's appeal should be dismissed with costs.

MAGEE and HODGINS, JJ.A., agreed with FERGUSON, J.A.

MACLAREN, J.A., agreed in the result.

Appeal dismissed with costs.