

trying to make a sale, but the agent finally sold a smaller plant to the Windsor company for \$1,800. The appellants claimed a commission on this sale, and on its being refused brought an action therefor.

Held, affirming the judgment of the Supreme Court of Nova Scotia, GWYNNE, J., dissenting, that the appellants were not employed to effect the sale actually made; that the respondents offered the commission only on the sale of the specific plant mentioned in the answer to the request for quotations; and that there was no evidence of any course of dealing between the two companies which would entitle the appellants to such commission.

Cahan, for appellants. *Belcourt*, Q.C., for respondents.

N.S.]

SUMNER v. COLE.

[June 12.

Contract—Offer and acceptance—Telegrams—Completion—Mutuality.

S., a grain merchant in Truro, N.S., telegraphed to C., a grain merchant in Toronto: "Quote bottom prices 20 to 25 cars, thousand bushels each, white oats delivered, basis Truro freight, bagged in our bags even four bushels each." C. replied next day: "White oats 32 half, Truro, bags two cents a bushel extra." S. telegraphed on the same day: "How much less can you do mixed oats for? Might work white at 32, but not any more. Answer." C. answered: "Mixed oats scarce but odd cars obtainable half cent less. Exporters bidding for white. Highest freight, Truro freight two half over Halifax. Offer white 32 hulled, 34 half in 4 bushel bags, Truro." Next day S. wired: "I confirm purchase 20,000 bushels oats, white, at thirty-two, mixed at thirty-one half bagged even four bushels in my bags. Confirm. May get order five cars more in bulk." And he confirmed it also by letter. C. answered telegram at once: "Cannot confirm bagged. Am asked half cent for bagging. Bags extra." S. replied: "All right. Book order. Will have to pay for bagging." C. wired on the same day: "Too late to-day. Made too many sales already. Will try confirm to-morrow." On receipt of this S. wrote urging action, and next day wired: "Will you confirm oats? Completed sale receipt first telegram yesterday. Expect you to ship." C. answered next day: "Market advanced two cents here since yesterday noon. Had oats under offer expecting your order until noon yesterday. When you accepted bagged, parties demanded half cent for bagging. They sold before your second wire arrived yesterday. This is why I could not confirm. Think advance too sudden to last." He wrote to S. to the same effect that day. The oats were never delivered, and S. brought an action for damages.

Held, reversing the judgment of the Supreme Court of Nova Scotia, that there was no completed contract between the parties, as they did not come to an understanding in respect to some of the material terms, and S. could not recover. (See 35 C.L.J. 455.)

W. J. O'Connor, for appellant. *Borden*, Q.C., for respondent.