

apples intended to be sold; that the property had, therefore, not passed, and that the loss must fall on the plaintiff."

One of the cases cited by Teetzel J., in *Lee v. Culp*, is *Box v. Provincial Ins. Co.* (1871), 18 Gr. 280. In this case "a warehouseman sold 3,500 bushels of wheat, part of a larger quantity which he had in store, and gave the purchaser a warehouseman's receipt, under the statute, acknowledging that he had received from him that quantity of wheat, to be delivered pursuant to his order to be indorsed on the receipt. The 3,500 bushels were never separated from the other wheat of the seller." It was held by the Court of Appeal that the purchaser had an insurable interest.

In that case the intention of the parties as to whether the property should or should not pass was discussed and Spragge, C., puts the effect of the conclusion arrived at, p. 290, as follows: "The judgment of my brother Mowat, upon the rehearing, proceeded upon the ground that it was the intention of the parties that the property should pass to the plaintiffs; and that the law, carrying out the intention of the parties, transfers the property where it appears to be the intention of the parties that it should be transferred. The learned Chief Justice adopts this reasoning."

\* In *Wilson v. Shaver* (1902), 3 O. L. R. 110, it was held "that whether the property in goods contracted to be sold has or has not passed to the purchaser depends in each case upon the intention of the parties, and the property may pass, even though the goods have not been measured, and the price has not been ascertained.

The plaintiff also contends that it was the duty of the defendants to place the wheat in cars on track at Owen Sound, and that the invoices so expressed.

The defendants claim that they paid all charges necessary to have the wheat placed in cars on the track at Owen Sound, deducting the lake freight and elevator charges for that purpose from the price of the grain as shewn on the invoices, and from the amount of the drafts drawn on the plaintiff, and the plaintiff accepting the invoices and drafts in this way, when he paid the latter, was in a position to then settle with the elevator people for all charges up to then necessary to enable the wheat to be placed on track at Owen Sound, having the money in his own pocket to do so.

It is not denied by the plaintiff that the deducted charges paid up everything in the way of charges to that date. The defendants contend, therefore, that the contract was, and