

FALCONBRIDGE, C.J.:— . . . Plaintiffs carry on business in the city of Winnipeg. Defendants are described in the statement of defence as carrying on the business of grain merchants and warehousemen in the town of Goderich. Defendants, however, claim, so far as this action is concerned, to be treated as millers, and not as grain merchants or speculators.

The action, according to the statement of claim, is based upon the alleged conversion by defendants to their own use of 10,000 bushels of wheat, part of a cargo of 95,000 bushels shipped by plaintiffs to defendants.

But the real dispute between the parties is as to the price of the wheat; and, a dispute having arisen between the parties, plaintiffs withheld the bill of lading for the last 10,000 bushels, and defendants, notwithstanding the absence of this document, contending that the wheat was all paid for, took the 10,000 bushels covered by the bill of lading referred to, which is the alleged conversion.

The real issue . . . is whether defendants have or have not paid in full for the 95,000 bushels.

Defendants first approached plaintiffs by letter dated 28th April, 1903, stating the company (defendants) would require wheat, and asking in about what shape and at about what price plaintiffs could furnish it. Plaintiffs replied by letter, dated 2nd May, 1903, stating that they were "selling wheat every day for export on the basis of 3 over New York July for one hard, and 1 $\frac{3}{4}$ cents over for one northern, cif. Georgian Bay or Buffalo:" and adding, "We are open to sell to you at the same price."

Plaintiffs contend that, in stating their willingness to deal on the basis of 3 over New York July, they were suggesting the adoption in selling to defendants of a well established and clearly defined method of dealing. Plaintiffs ask me to find that there exists in the grain trade on this continent a clearly defined and well understood usage, by which what is known as cash wheat is sold on the basis of future wheat of a stated month on one of the established produce exchanges, and that when a vendor of cash wheat agrees to sell the same to a purchaser on the basis of 3 over New York July, the transaction involves a sale by the vendor of the cash wheat, and a counter-sale by the purchaser of the New York July wheat to the vendor of the cash wheat,