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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

JUNE 29TH, 1918.

MALOOF v. BICKELL.

Contract—Brokers—Dealings in Grain for Customer—Terms on which Dealings Conducted—Memorandum in Writing—Notice to Customer—Right of Brokers to Sell Grain when Margins Exhausted—Authority to Purchase Grain—Illegality of Transactions under sec. 231 of Criminal Code—Failure to Shew.

Appeal by the plaintiff from the judgment of KELLY, J., 13 O.W.N. 4.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, J.J.A.

R. McKay, K.C., for the appellant.

R. T. Harding, for the defendants, respondents.

FERGUSON, J.A., in a written judgment, after stating the facts and the conclusions of the trial Judge, said that he had no doubt as to the correctness of the finding that the plaintiff authorised the order of 50,000 bushels of corn put in by the witness Symmes on the 26th August, 1916; and the question arose whether the defendants were justified in selling, on the 28th August, the plaintiff's corn for lack of margin. On that day the market declined rapidly, so that the plaintiff's margin was not equal to the decline in value which had taken place. Owing to the plaintiff's absence in Northern Ontario, the defendants were unable to communicate with him readily, and thus receive either instructions or margin, and were thus under the necessity of either assuming the risk of the transactions by advancing money to protect the plaintiff's trades or of closing his account by orders to sell. They chose the latter alternative, with the result that the credit balance of the plaintiff was exhausted,