

WHEN WERE THE POTATOES FROZEN?

B. Frank Smith, M. L. A., Appeals
from Verdict Given Against
Him in the St. John
Circuit Court

(The Gleaner)

The attention of the Appeal Court was given to hearing arguments by Dr. Baxter, K. C., who with J. O. Hartley, K. C., and R. P. Hartley, is appearing in support of the appeal by B. Franklin Smith, of Florenceville, to set aside the verdict for \$1,832.75 entered against him at the suit of Richard O'Leary by the St. John Circuit Court in October last, or for a new trial. M. G. Teed, K. C., and J. F. Teed, for Mr. O'Leary. The suit arose over a transaction in potatoes which the defendant agreed to purchase from plaintiff, but which, it is alleged, were delivered in such a bad condition that they could not be used.

It seems that in the month of November, 1916, O'Leary had one of his boats lying at Shippegan, from which point he was desirous of obtaining a freight to the Miramichi, where he had to load boxes for packing fish. He therefore bought a cargo of potatoes, which he loaded onto the vessel. At the same time he telephoned defendant at Florenceville that he had about 500 barrels of potatoes coming to Newcastle, and asking if he was open to purchase, and, if so, what he would pay. Defendant offered \$2.25 a barrel f. o. b. Newcastle, which figure plaintiff accepted. Defendant also avers that he stipulated that the cars should be equipped with what are known as "Economy Heaters" at both ends, as otherwise the potatoes would be liable to be seriously damaged in transit. Plaintiff admitted that something was said by Mr. Smith about heating the cars, but said he could not recall the exact terms of the conversation.

The potatoes were loaded on the boat, which left Shippegan on the 14th of November and arrived at Newcastle on the afternoon of the 15th. They were there transferred to the railway cars, the temperature during the days of transfer ranging between 10 and 32 degrees Fahrenheit. During the process of transfer, oil heaters were put in the cars, which were removed and replaced by government heaters when the loading was done. The cars left Newcastle on the morning of the 24th for Centreville, pursuant to instructions sent by Mr. Smith. On their arrival at Centreville, on the night of the 25th, the contents of one were in such a condition as to be absolutely worthless, according to defendant's contention, but a considerable proportion of the other car lot were saleable. Defendant alleges that he immediately got in touch with plaintiff, and told him the situation offering to take the saleable stock at the price agreed on, but this is denied by plaintiff. At any rate, defendant saved 189 barrels, which he kept, and for which he was, he says, always willing to pay. He refused to take delivery of the remainder altogether, as he claimed they were worthless, owing to their frozen condition.

There was considerable conflict of evidence as to what must have been the condition of the potatoes at the time they were loaded. A large number of witnesses who inspected the potatoes on their arrival at Centreville declared that they had not been frozen in the cars, but must have been frozen when being loaded, or before. The reasons adduced for this were that the potatoes were not frozen on the top or at the sides of the cars, with good ones left unfrozen in the centre, as might naturally have been expected to have been the case had they been frozen in the cars, but were found to be frozen all through, good potatoes and frozen

ones being found intermixed together throughout the whole of both cars, there being many large bunches of potatoes frozen together in one mass. On the other hand, plaintiff's witnesses deposed that the potatoes were despatched in perfect condition and without any suspicion of being frozen.

In reply to questions left by the Judge, Mr. Justice Barry, the jury found that there was no specific agreement as part of the terms of the contract, that the cars should be equipped with "Economy Heaters"; that the potatoes were shipped from Newcastle in a sound and merchantable condition, and that they became frozen in transit from Newcastle to Centreville. Further, that there was no supplementary agreement that defendant should take such portion of the potatoes as were saleable as alleged.

Defendant appeals on the ground that there was misdirection on the part of the learned judge, and that the jury showed a disregard to the evidence adduced, and that on some points the verdict is altogether against the evidence.

Courts as a rule, hesitate somewhat to disturb the findings of a jury upon questions of fact, seeing that the latter have the privilege of hearing the evidence tendered, and are in the best position to judge for themselves as to the value of it, unless it can be shown that the jury was perverse and came to conclusions such as no reasonable man might be expected to come to. Quite a number of cases bearing on this point were cited by counsel to show that the court would be justified in upsetting the verdict entered for plaintiff.

Little Kilburn Girl Gets Overseas Letter

Little Miss Olga Jennie Hallett, of Coronation, who is eight years old, has the honor of being the youngest worker in the Kilburn Red Cross society, having knit several pairs of socks for our soldiers. The following is a copy of a letter recently received from the lucky recipient of her Christmas stocking.

Sandgate, Eng., Jan. 1.

My Dear Miss Hallett: Many thanks for the sock you so neatly packed and sent. Every article was in perfect order and very acceptable. You addressed your letter to "A Brave Soldier." How nice of you! but I am no longer brave. I went to France in Dec. 1914, with Princess Patricia, returning to England in March, suffering from frozen feet and enteric fever and have been unfit ever since. I am still serving in the C.A.M.C., caring for the poor fellows who are doing their bit.

I must tell you I have been married since the war and have a daughter fifteen months old. So your candies were taken care of by her. She is named after my Regiment and we call her Pat. We hope to be going back to Canada after the war is over, or when the Conscripts relieve us. Then we may meet you and thank you personally.

Wishing you a Happy New Year, trusting you will not have to send stockings next Christmas. All the boys hope to be home victorious by then.

I remain,
W. Holloway

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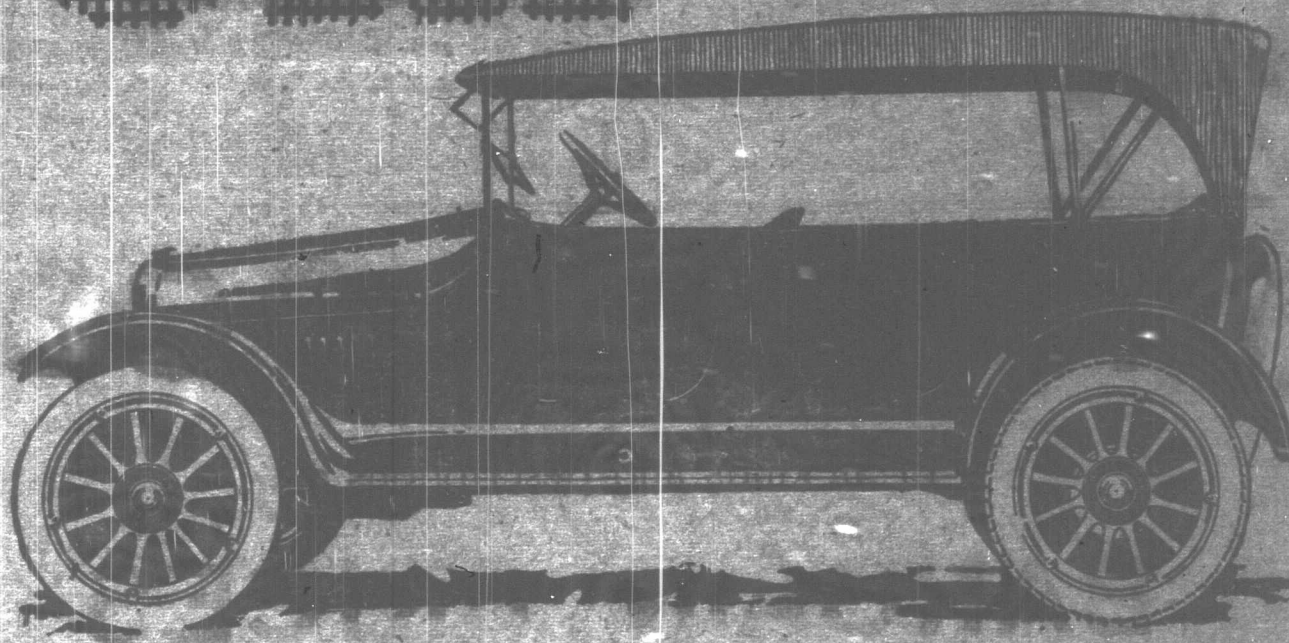
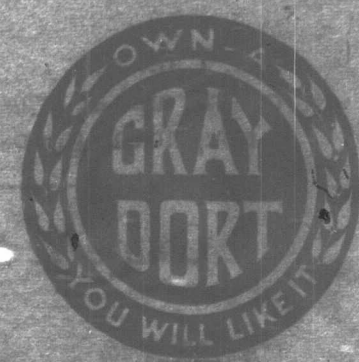
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