

case was overruled in *Consumers Gas Co. of Toronto v. City of Toronto*, 27 S. C. R. 453, and, on the authority of this case and *Re Toronto Railway Co. Assessment*, 25 A. R. 135, the rails, poles, and wires of a street railway company are now assessable as real estate.

Mr. Chrysler urged that the agreement should be construed in the light of . . . the Fleming case, but I do not see that, even if this were so, it would assist in the least in determining whether the storage battery is assessable as real or personal estate. . . . The parties may not at the time have had in mind the subject of storage battery, but they have chosen to specify "tracks and rolling stock," and I cannot say that a storage battery is ejusdem generis with either of these in clause 18, or with "rails, ties, wires" in clause 52. I think the general words following these 3 in the latter clause would have reference to such similar items as poles, fish-plates, spikes, etc.

Such words as "plant and machinery" have been omitted from the agreement presumably with intention, and I should say that the storage battery might be properly included as within the meaning of these descriptive words, but not within the meaning of any of the classes of property particularly mentioned in the agreement.

Action dismissed with costs.

FALCONBRIDGE, C.J.

MARCH 26TH, 1906.

TRIAL.

NORTHERN ELEVATOR CO. v. LAKE HURON AND
MANITOBA MILLING CO.

Contract—Correspondence—Sale of Wheat—Dispute as to Price—Terms of Contract—Evidence of Custom or Usage in Trade—Appreciation of Evidence.

Action for conversion of wheat.

J. H. Moss and Featherston Aylesworth, for plaintiffs.

W. Proudfoot, K.C., for defendants.