

## The Meaning of F.O.B.

### Court Judgment in Potato Deal.

A ruling bearing on the legal significance that is to be attached to the commercial term f.o.b. was given this week by Mr. Justice Greenshields presiding in the Court of Appeals. It grants the appeal of Brace McKay and Company, Limited, and reserves a judgment of the Superior Court which dismissed appellants' claim against William Schmidt and Company, to recover \$1,054.04, alleged to be due on a consignment of potatoes.

Brace, McKay and Co., of Summerside, Prince Edward Island, shipped a car load of potatoes "f.o.b. Summerside to Mile End Station, Montreal," on the order of William Schmidt and Co., trading as the St. Louis Grain & Feed Company. The potatoes reached Montreal on July 4, 1917, but Schmidt and Co. refused to accept the goods because the vendors declined to allow the potatoes to be examined and inspected on their arrival here. They pleaded that the potatoes had been sold "f.o.b. Summerside," and "stock guaranteed good when shipped."

The vendors sued for the value of the potatoes, but their action was dismissed, the lower court holding that the contract called for, and plaintiffs intended to make delivery of the potatoes in Montreal; that the effect of the bill of lading was to reserve ownership of the goods in plaintiffs, and there was no delivery, within the meaning of article 1492 of the Civil Code, to defendants at Summerside; that the ownership of the potatoes did not pass to defendants at Summerside; that the defendants had the right to inspect the potatoes on arrival in Montreal to satisfy themselves that they were in accordance with the contract; and that in refusing to allow the inspection of the potatoes, plaintiffs failed to perform their contract and defendants were thereupon released from it.

#### The Judgment.

Justice Greenshields: "The proof in the present case is clear that, upon the confirmation of the contract, the potatoes necessary to fill the contract were put in bags and loaded on the only means of conveyance necessary to bring them to Montreal. I have no doubt whatever that the property in those potatoes passed to the buyer, and that from and after the loading of them upon the car they were at the risk of the buyer, and were his property. The seller had fulfilled his contract. There was something that the buyer had to do. He had contracted to do it, and that was, to pay cash for these goods. The seller, the appellant was well within his rights in taking all the steps necessary to secure the fulfilment by the respondents of what they had contracted to do. He had contracted to certain means to secure this result. He might have adopted a different

means. The contract gives no term for payment; therefore, it is a cash transaction.

"The appellant took the bill of lading in its own name; endorsed it to its bankers, and attached a sight draft and instructed the bank to deliver the bill of lading, not upon receiving the cash, but upon acceptance of the draft, which would give the buyer from three to five days within which to secure the money to pay the draft. The trial judge is of opinion that this process amounted to the retention by the seller of the ownership of the goods. I am not of that opinion. It is not a retention of the right of disposal, 'jus disponendi' as known to the English law. It is a mode of securing to the seller the fulfilment of the buyer's obligations to pay cash for the goods.

#### Responsibility on Buyer.

"If a merchant or dealer sees fit to buy goods at a distance of 800

miles, and stipulates in the contract that he buys them f.o.b. at point of shipment, and agrees to pay cash or cash against documents, then he must do one of two things—inspect them before they are shipped, or pay for them without inspection, if inspection necessitates the physical possession by him of the goods. In the present case no suggestion is made that the potatoes were not all that the contract called for. The only assigned reason for refusal is that inspection was refused. If the potatoes had deteriorated between the point of shipment and the destination, the loss would be upon the buyer. If respondents had inspected the goods in Montreal, the respondents would be inspecting their own goods. I am of opinion that the judgment should be reversed and the action of the appellants maintained."

Justices Guerin, Dorion, Allard and Howard concurred.

## Great Trade Depression in Japan Worst in Country's History

By A. E. BRYAN.

On my return to Japan from Canada, I find business in a very bad state. Indeed, prior to my departure from here three months ago, things were beginning to look rather dull, but I venture to say that the industrial depression in Japan to-day is much more serious than was the case after either the China or Russia-Japanese wars, and it is probable the worst has not been reached yet.

Import business is practically at a standstill. The goods which are arriving now and which are crowding up the customs sheds at every port, were ordered and in most cases paid for many months ago—but very little new business is now being placed. Most of the large Japanese importers have been hit very hard by falling prices, while those who speculated heavily a few months ago have found themselves in such a precarious position that they must adopt very drastic means of retrenchment in order to prevent financial collapse. On the other hand, it is true that some of the largest and formerly best-thought-of firms in Japan have practically gone into liquidation, while the latest reports are that other so-called first-class firms have just discharged fifty per cent or more of their employees, and that they will be obliged to put themselves into the hands of their creditors if bills payable are presented on time.

#### Banks Discourage Imports.

The Japanese banks for their part are sitting absolutely air-tight, and nowadays it is almost impossible for any Japanese firm to get a letter of credit issued in favour of Canadian exporters. Public authorities, together with the Bank of Japan and all other Japanese banks, are doing everything possible to discourage further importations and to bring back a favourable balance of trade, as they figure that from now until the end of the year it

will be a difficult thing to wipe out the excess of imports, which amounted to 480,000,000 yen for the eight months of 1920.

Exports from Japan have also fallen away greatly, due particularly to the decline in exports of raw silk, waste silk and silk tissues. Beans and peas have also registered a heavy loss as well as starches and woollen tissues.

#### Economic Situation Serious.

It is very difficult to realize the seriousness of the present economic situation in this country, when one remembers the abounding prosperity manifested during and after the war.

Every day brings its additions to the ranks of those firms which are discharging many of their employees as a result of the present business conditions. Already a few very well known firms have been forced through speculation to go into liquidation, while there are constant rumours of other very well known concerns who are in a position of great financial embarrassment and who as a result have been asking help from banks and creditors to postpone dates of payments for moneys due. Emphatically, this is a time for the exercise of great caution in business dealings with Japan. The banks have taken a bold stand, and will no doubt see the "business world" of the country through successfully, but at present they are kept busy trying to divert collapses at home and as a result are discouraging all import business and the issuing of letters of credit.

Foreign houses here are doing "hand-to-mouth" business with the stocks they have on hand, but very few new transactions are being consummated, nor is there likely to be so for some months yet, until such time as Japanese bankers think the time ripe when they can stand behind their own importers with the necessary financial security.

## Opportunity for Electrical Manufacturers.

By Trade Commissioner D. H. ROSS.

The Government of Victoria, Australia, having decided to develop the brown coal resources of the State, created a commission entitled the Electricity Commissioners to prepare a scheme for the purpose of utilizing the coal deposits for the production of electricity for distribution throughout the State. Incidentally, the brown coal resources will be developed with a further object of supplying fuel for all purposes, a part of which development will be the installation of a briquetting factory.

Boring operations conducted, some time ago, by the State mines department demonstrated the existence at Morwell—some 80 to 90 miles from Melbourne—of over 70 square miles of brown coal area, in which the enormous deposits exceed, in some instances, 200 feet in thickness, with overburden ranging from 20 to 100 feet.

Tenders for the necessary plant, of which particulars are given in subsequent paragraphs, close at Melbourne on February 24, 1921, hence it is of paramount importance that Canadian manufacturers should, at the earliest moment, make themselves "au fait" with the specifications in order to prepare their estimates and submit their tenders in time to reach Australia before the due date.

#### Cost of Generating Plant.

While it is manifestly impossible for even experts—under present conditions—to closely approximate the cost of the generating and transmission plant (the bulk of which will be imported), together with the outlay in the installation, yet it is generally assumed that, for the development outlined in the elaborate specifications and drawings, the total expenditure will be in the vicinity of \$15,000,000.

The Morwell electric power scheme comprises the erection of a plant on the brown coal field capable of an output of 50,000 kws. in the first stage, and later of being developed up to a maximum of 150,000 kws.

The power will be conveyed, in the first instance, to Melbourne—a distance of about 90 miles—by means of a transmission line consisting, in the first stage, of one line of towers with two 3-phase circuits each having a capacity of 25,000 kws.

Alternative tenders are being invited for the conductors of copper and aluminium, and a decision as to which metal is to be used will be arrived at after a careful study of the relative costs of installation.

#### Data as to Tenders.

A number of copies of the tender forms and specifications for the plant and equipment required by the Electricity Commissioners of the State of Victoria, Melbourne, in connection with the installation of the largest electrical power development in Australia, have been forwarded to the Commercial Intelligence Branch of the Department of Trade and Commerce, Ottawa, for the information of interested Canadian manufacturers (refer to file 26137).