

Hugh E. Rose, K.C., for plaintiffs.

George A. Stiles, for defendants.

HON. MR. JUSTICE LEITCH:—The words “or sight draft against bill of lading,” were struck out of the printed contract at the instance of the brewery company before it was signed. The erasure of these words was advantageous to the brewery company. Had these words been allowed to remain in the contract, the brewery company would have been bound to pay for the hops upon presentation of the bills of lading, whether the hops had arrived or not. By the elimination of these words the brewery company were only obliged to pay for the hops on arrival, and after they had been given an opportunity of inspection. The hop company were not bound to divest themselves of the property in the hops and vest the ownership in the brewery company until they received the cash.

A controversy arose, as appears by the correspondence, as to the mode of payment, and the parties got at cross-purposes. I think, however, the brewery company were to blame, and that they had no just or legal right to refuse to accept the hops, and thus violate the contract.

The hop company instructed the carriers to permit inspection without surrender of the bills of lading. The carriers were ready to permit such inspection. The brewery company were also afforded by the carriers, acting on the instructions of the hop company, ample opportunity to inspect, sample, and re-weigh the hops. The brewery company never asserted that the hops were not according to sample; the weights were not questioned; the hops were choice hops.

The hop company did everything necessary to entitle them to be paid for the hops. The brewery company at one time contended that net cash meant thirty days' credit. They offered a cheque in payment instead of the cash. The hop company declined to hand over the bills of lading, the evidence of ownership, until they were paid the cash.

The hop company was ready and willing, and in a position to hand over the bills of lading, and the hops, the moment they were paid the cash. The upshot was that the brewery company did not pay the cash, cancelled the contract and refused to take the hops. The hops were delivered on cars, and were in the hands of the carriers, the Grand Trunk Railway and the Ottawa New York Railway, at Cornwall. These companies were in a position to hand over the hops to the brewery company as soon as instructed by the hop company.