

from the defendant on the 26th April, 1916, was "clean and clear of foul seed."

The jury's findings, in answer to questions, were: (1) The defendant sold to the plaintiff, through his brother, the half bushel of red clover seed in question. (2) The seed contained "a greater number of seeds of noxious weeds than 80." (3) The defendant's clerk, at the time of sale, and in the presence of the defendant, in the usual way represented to the plaintiff's brother that this red clover seed was clean and clear of foul seed, or words to that effect. The jury assessed the plaintiff's damages at \$300, for which amount judgment was ordered to be entered.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

W. S. Herrington, K.C., for the appellant.

W. N. Tilley, K.C., for the plaintiff, respondent.

The judgment of the Court was read by MEREDITH, C.J.O., who said that only one warranty was alleged or attempted to be proved, and that was that the seed was clear and clean of foul seed, or that it was so according to Government standard; and the reason for asking the third question was probably twofold, viz., to prove a breach of the warranty, or, if the jury should find that the respondent had failed to establish the warranty, to enable the respondent to recover apart from warranty, on the ground that the sale of seed containing a greater number of seeds of noxious weeds than 80 to the ounce was a contravention of the Seed Control Act, 1 & 2 Geo. V. ch. 23 (D.); and that, having been so sold, an action lay by the purchaser for the recovery of the damages he had sustained by reason of his having been supplied with such seed.

It was not quite clear upon the evidence whether the warranty that was given was an unqualified warranty that the seed purchased was clean and clear of foul seeds or a warranty qualified by the words "according to Government standard." Taking the answers of the jury to mean that the warranty was the qualified warranty mentioned—sec. 8 of the said Act prohibiting the sale, for seeding purposes, of seed containing a greater number of noxious weeds than 80 to the ounce—the only other finding necessary to support the respondent's judgment was that made by the answer to the second question; and the only question involved in the appeal was whether or not that finding was supported by the evidence.

After an examination of the evidence, the learned Chief