

about the embargo which prevented the shipment of the oats to New York.

On the 25th January, the respondents replied acknowledging the receipt of the appellant's letter and said that they did not expect a better grade than "rejected," and instructed the appellant to ship to New York for export to Liverpool, and that if the railway company required a foreign consignee it would be the Shipton Anderson Company, and adding: "At present none of the railways are taking bulk grain for export to New York, but we are advised that the embargo which has been in effect for over a month will be lifted on Monday. You will have to try and pick up enough oats to make two cars of 54,000 lbs. each, and see that you get only cars of 30 tons capacity of 60,000 lbs. each, because the minimum for a car of oats for export in a thirty-ton car is ten per cent. of the marked capacity of 54,000 lbs., but if the car is otherwise there will be a dead freight."

There was a postscript to this letter in which it was said that, if the embargo were not lifted in a little while so that the oats could be shipped—and it was important to the appellant that they should be shipped in order that he might get his money—he was to let them know, and they would make some further proposition and arrange with him.

This correspondence, as contended by Mr. Cowan, shewed that the respondents' proposition was to enter into a contract which would oblige the appellant to hold the oats until the embargo was lifted. On the other hand, the appellant's proposition was that he should hold them for a reasonable time. There was no *consensus ad idem*, and therefore no contract.

The appeal should be allowed with costs and the action dismissed with costs.

SECOND DIVISIONAL COURT.

OCTOBER 17TH, 1916.

*RE J. McCARTHY & SONS CO. OF PRESCOTT LIMITED.

Company — Winding-up — Creditor's Claim—Enforcement of—Forum—Order of Judge in Chambers Allowing Creditor to Bring Action—Discretion—Appeal—Winding-up Act, R.S.C. 1906 ch. 144, secs. 22, 23, 133.

Appeal by the liquidator of the above-named company from an order of KELLY, J., in Chambers, of the 6th July, 1916, giving leave to the British Columbia Hop Company Limited to begin

*This case and all others so marked to be reported in the Ontario Law Reports.