

HON. MR. JUSTICE SUTHERLAND:—The plaintiff, a miller, carrying on business at Inglis Falls, not far from Owen Sound, had for some time prior to the fall of 1911, been purchasing grain from the defendants, whose head office is at Kingston, who have a sub-office in Toronto, and who carried a considerable stock of wheat in the Canadian Pacific Railway elevator at Owen Sound. The plaintiff's purchases were made usually, if not entirely, at the latter place. The defendants had, apparently, no agent at Owen Sound, but were in the habit of sending word to and receiving word from the plaintiff about sales of grain through the agent of the Canadian Pacific Railway in charge of the elevator there.

At other times the parties communicated directly as to prices and orders.

The usual and ordinary practice between them seems to have been as follows; the plaintiff, either personally or through said elevator agent, would place an order with the defendants for a certain quantity of wheat at a stated price, and the latter would thereupon send through their Toronto bank to a bank at Owen Sound a written order in favour of the plaintiff upon the agent in charge of the elevator authorizing him, on its production, to deliver to the plaintiff the number of bushels of wheat mentioned therein. Attached to the order, was an invoice and draft. The plaintiff then went to the bank at Owen Sound, paid the draft and received the order. Later, and when he wanted the wheat in whole or part, he applied to those in charge of the elevator for cars and received it.

The plaintiff probably on the 2nd November, 1911, through said agent in Owen Sound, placed with the defendants an order for 2,000 bushels No. 1 Northern wheat at \$1.06 per bushel. The next day the defendants forwarded to a bank in Owen Sound, through their bank at Toronto, the following documents:—

“1. Invoice, Toronto, Ontario, Nov. 3rd, 1911.

W. A. Inglis, Esq., Inglis Falls, Ont., bought of James Richardson & Sons:—

To 2,000 bushels, No. 1 Northern Wheat at \$1.06 \$2,120 00
Cr.

By elevation $\frac{1}{2}$ c. per bushel	\$	10 00	
By lake freight $1\frac{1}{4}$ c. per bushel		25 00	
By sight draft		2,085 00	2,120 00

Track Owen Sound, order on elevator attached to draft.