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a dealer in oats, but was only authorized to supply oats to residents of their own municipality, and therefore sub-sec. 1 of sec. 16 of the Sale of Goods Act, R.S.S. 1909, ch. 147, would not apply.

I am of the opinion that there was never any warranty in this case. "It depends upon the construction of the contract whether any statement made with reference to the goods is a stipulation in the contract, being a condition, or a warranty only, or whether it is an expression of opinion, or other mere representation not forming part of the contract." 25 Hals. page 149, para. 276.

The defendants were not selling oats to parties outside their municipality. Plaintiff went to them to buy, and anything said by Thompson at that time could only be an expression of opinion, as he certainly was not authorised to warrant the oats to a non-resident of the municipality. It was simply a sale of oats without a warranty, and, as plaintiff got the oats and paid for them, he cannot recover from defendant either damages or the price paid, because the oats were not of the quality he expected.

It is unnecessary to consider the question of *ultra vires* which was argued by Mr. Brown, because, even if the transaction was within their powers, they would not be liable under the facts in this case.

I would allow the appeal with costs.

*Appeal allowed.*

SASK.

C. A.