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APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

SEPTEMBER 28TH, 1916.

HAY v. GREEN.

Contract — Formation — Sale of Goods — Correspondence — Failure to Shew Consensus ad Idem.

An appeal by the defendant from the judgment of the County Court of the County of Kent in favour of the plaintiff in an action brought to recover damages for the breach of an alleged contract for the sale of oats.

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

M. K. Cowan, K.C., and A. R. Bartlet, for the appellant.

R. L. Brackin, for the plaintiffs, respondents.

MEREDITH, C.J.O., delivering the judgment of the Court, said that the question turned entirely upon the effect of three letters. The first was from the respondents to the appellant, dated the 21st January, 1916, in which reference was made to the fact that a Mr. Hope, who was in their employment, had brought in a sample of oats, and that the appellant had two large cars at Windsor. The letter went on to state: "We would take these oats from you at 41c. track Windsor, shipment to New York for export shipment to be made just as soon as any trunk line will take oats to New York for export. We are told the embargo will be lifted almost every day, but have been told this for two weeks, and it still seems to be as tight as ever. If you accept, please advise us, and we will send you shipping instructions that can be used just as soon as the embargo lifts."

The appellant in his answer, on the 24th January, spoke of the oats as being 3,000 bushels on the Grand Trunk at Belle River, "like the sample you have." Then he mentioned that there was a smell of must on the oats, and that they would not be better than the sample, but would be as good, and that he would book them to the respondents, provided that he was able to get cars to move them out within a reasonable time. He then spoke