

agreement could be legally made, was of opinion that the same was insufficient.

Counsel for respondents in his factum and at the oral argument before us contended that there never was a final and concluded contract for the sale of 500 cases of tomatoes. The circumstances under which the order was given and the verbal evidence of Wylie and Galbraith and having in view Wylie's limited authority in the matter, tend to support this contention, but the written order is against it and the Court of Review properly held that verbal testimony of facts and declarations made before or at the time of writing the order was inadmissible to contradict or change the terms of the written order.

In the view that I take of the case, it does not turn on this point. The respondents invoke a subsequent agreement modifying from 500 cases to 200 cases, and the main question is whether or not they have established such subsequent agreement. The original order was given on the 28th of June, 1916. On the 3rd or 4th of July, Galbraith, noticing that the order was for 500 cases of tomatoes, telephoned to Beaulieu and the latter came down to Galbraith's office: [Here the judge makes an examination of the evidence, and cites the text of the deposition of several witnesses.]

It will be observed that Beaulieu first admits having gone to Galbraith's office a couple of weeks after the order, and in the second deposition he says the interview took place around October which would be four months afterwards. Beaulieu further states: "I am positive we received the goods the same week as the order was given on Wednesday the 28th of June", but the evidence and exhibits clearly show that Beaulieu is mistaken in this