

THE
ONTARIO WEEKLY REPORTER

VOL. 23 TORONTO, FEBRUARY 6, 1913. NO. 15

HON. MR. JUSTICE SUTHERLAND. JANUARY 18TH, 1913.

INGLIS v. RICHARDSON.

4 O. W. N. 655.

Sale of Goods—Wheat in Elevator—Destruction by Fire—Passing of Property in—Payment of Transshipping Charges by Vendor—“Track Owen Sound”—Meaning of—Knowledge of Bailee—Salvage—Claim on Insurance Company—Estoppel by.

Action by plaintiff, a miller, against defendants, for non-delivery of 3,000 bushels of wheat purchased by him from defendants. Plaintiff's place of business was near Owen Sound, and defendants carried a considerable stock of grain in the C. P. R. elevators at Owen Sound. Plaintiff purchased from defendants 2,000 bushels of wheat on each of two occasions, giving his orders to the C. P. R. agent at Owen Sound. Defendants, as was their custom, sent an order for the wheat purchased, with draft attached, to their bank at Owen Sound for presentation to plaintiff. The order read “track Owen Sound,” but sufficient deductions had been made by defendants from the price to pay the cost of placing the wheat in cars on the track and, as a matter of practice, plaintiff had been in the habit of transshipping the wheat to cars procured by him as he needed it. Plaintiff paid the drafts, received the orders, took delivery of 1,000 bushels and left the balance in the elevator for some time, where it was destroyed by fire. Plaintiff claimed the property therein had not passed to him, as there had been no ear-marking of his wheat by defendants.

SUTHERLAND, J., *held*, that plaintiff was the owner of the wheat in question, and that the understanding and custom of the parties was that he was to load his own cars, and, further, that as the bailee's agent must have inspected the orders before making delivery of the 1,000 bushels, there was sufficient notice to the bailee of the transfer.

Lee v. Culp, 8 O. L. R. 210;

Box v. Provincial Ins. Co., 18 Gr. 280, and

Marshall v. Jameson, 42 U. C. Q. B. 115, referred to.

Action dismissed, with costs.

Action for damages for non-delivery of 3,000 bushels of wheat purchased by plaintiff from defendants.

McPherson, K.C., and Masson, for the plaintiff.

MacLennan, for the defendants.