

quantity, while Asselin and Fournier mentioned the former—and took them to his office, as he said, as samples. This act did not constitute a delivery of the potatoes, bringing the bargain within the provisions of the statute, the evidence being clear that there was no closed bargain at that time, not even the quantities being known by Cleghorn & Co., and there being no intention whatever on the part of Asselin to deliver samples, his consent to taking them not having been asked: *Hinde v. Whitehouse*, 8 Rev. Rep. 676; *Klinitz v. Surry*, ib. 833; *Gorman v. Body*, 2 C. & P. 145; *Gardner v. Grout*, 2 C. B. N. S. 340. There were subsequent negotiations about the potatoes. The bills of lading were handed to Cleghorn by Asselin, but were not indorsed. The parties disagreed about the price, Asselin wanting a higher price than Cleghorn was willing to give. The carriers refused to let Cleghorn have the potatoes without the bills of lading indorsed by Asselin. I find that at no time did Asselin part with the potatoes; that there was no contract closed by the parties; and that the acts of Cleghorn did not bring the bargain within the provisions of the statute and cases. *Taylor v. Smith*, [1893] 2 Q. B. 65, and cases therein cited, and *Norman v. Phillips*, 14 M. & W. 277, 280-282, referred to. There being no contract binding on Asselin he is entitled to the potatoes. Order accordingly and for payment by Cleghorn & Co. of all costs and expenses occasioned by their claim, including the costs before the Master.

JANUARY 16TH, 1903.

DIVISIONAL COURT.

RE AMERICAN TIRE CO.

DINGMAN'S CASE.

*Company—Winding-up—Preferred Claim—“Clerk or other Person in Employ of Company”—Sales Agent.*

Appeal by Archibald W. Dingman from the decision of the Master in Ordinary (in the course of the winding-up of the company), that the appellant was not entitled to rank on the assets of the company as a preferred creditor, by virtue of sec. 56, sub-sec. 2, of the Winding-up Act, R. S. C. ch. 129, and amending Acts, as being a “clerk or other person in the employ of the said company.”

A. W. Holmsted, for the appellant, contended that, as by the terms of his employment, he had to devote his whole time and attention to the business of the company, as mechanical expert and inspector to the department of the company having charge of the sale of the “New Departure Coaster Brake,”