HIGH COURT DIVISION.

LOGIE, J. OCTOBER 15TH, 1920.

FELDSTEIN v. SCULTHORP.

Contract—Purchase and Sale of Grain—Formation of Contract—Correspondence—Conditions—"Crop Conditions"—"Approval of Sample"—Rejection of Sample—Vendors Relieved from Contract—Action by Purchasers for Breach—Dismissal.

Action for damages for breach of a contract for the sale by the plaintiffs to the defendants of 2,000 bushels of pease.

The action was tried without a jury at a Toronto sittings.
A. C. McMaster, for the plaintiffs.
Grayson Smith, for the defendants.

LOGIE, J., in a written judgment, said that the contract was said to be contained in the correspondence.

After setting out the correspondence, the learned Judge said that the contract, on the 25th July, 1917, stood complete, with two conditions, viz., "subject to crop conditions" and "sample meeting with approval."

On the 27th September, the plaintiffs were advised that the defendants would not have more than 666 bushels to ship, and the plaintiffs recognised this and acquiesced.

On the 14th November, the defendants shipped their first sample, which the plaintiffs, by letter of the 19th November, stated was satisfactory; and the result was a completed contract, enforceable by either party, for the purchase and sale of 666 bushels of Marrowfat pease at $4 per bushel, to be paid for on delivery in Pittsburg, with freight from Port Hope added.

The matter, however, did not stand thus, but was put at large by the subsequent conduct of the parties, and neither party treated the acceptance of the first sample as finally binding.

New samples were forwarded, and were rejected by the plaintiffs.

The plaintiffs and defendants dealt, to the knowledge of each, with the crop planted by farmers from seed supplied by the defendants; and the defendants were not, by the terms of the contract, obliged to purchase in the market other pease not grown from the defendants' seed to fill the plaintiffs' contract.

Even if this were not so, there was an almost total failure of pease in Ontario in 1917; and the defendants could not, even if