

FEBRUARY 9TH, 1909.

DIVISIONAL COURT.

MELADY v. JENKINS.

Contract—Carriage of Grain—Rate of Payment for Carriage—“Bushel”—Different Standards of Measurement—Place where Contract Made—Place of Completion—Bills of Lading—Evidence of Usage or Custom—Ship—Powers of Master as Agent of Owners—Action to Recover Overpayment Made Voluntarily.

Appeal by defendants from judgment of MORGAN, Jun. Judge of the County Court of York, in favour of plaintiff in an action in that Court, to recover \$153 alleged to have been overpaid to defendants, in the circumstances stated in the judgment.

The appeal was heard by BOYD, C., BRITTON, J., MAGEE, J.

G. R. Geary, K.C., for defendants.

W. N. Ferguson, K.C., for plaintiffs.

BOYD, C.:—The defendants, carriers and owners of the steamer “Squire,” contracted with plaintiffs to carry a quantity of oats from Fort William, in Ontario, to Buffalo, in the United States, at the rate of $2\frac{1}{2}$ cents per bushel. Bills of lading were issued in respect thereof, directing the delivery to the Bank of Hamilton, and these were indorsed by the bank to the plaintiffs, merchants in Toronto, owners of the oats. Upon claiming delivery, the defendants charged freight at the rate of $2\frac{1}{2}$ cents upon each 32 lbs., the American standard of measurement, which they claimed to be a bushel within the meaning of the contract; the plaintiffs, contending that the Canadian standard of 34 lbs. to the bushel was what the contract meant, paid the whole amount demanded, \$2,607.74, and now bring suit for the recovery of the excess claimed to be paid, i.e., \$153.

The agreement for carriage was made by telegrams and correspondence from Chicago to Toronto, through Prudenville & Co., agents for the owners of the vessel, the defendants, in the States, to the plaintiffs, at Toronto. And it