

reference to these 5 cars did not justify a finding that the hay in the cars had no value, and that the amount awarded should be materially reduced.

The learned Justice of Appeal was of opinion, after reading the evidence, that there was not before the trial Judge sufficient evidence to permit him making any allowance for breach of warranty in reference to the hay in 4 of the 9 cars; but, on the other hand, there was ample evidence to support a finding that the hay in the other 5 cars had no commercial value at the point of delivery—Brantford.

According to the contract, the hay in the 5 cars should have been "No. 2 hay." The evidence established that it was "no grade hay." Some of it was not of the mixture of grasses required in No. 2 hay. All of it was either musty or so damp that, if it had not already commenced to heat, it would heat unless taken from the cars and dried; and the question was, had hay of that character any market-value at the time and place of delivery?

The weight of the evidence was that, after the hay arrived at Brantford, it could not have been resold or re-handled to advantage or for anything over and above the cost of handling; and that, consequently, the trial Judge would have been justified in concluding that the hay in these 5 cars had no commercial value at Brantford, and in awarding the plaintiff his loss on the 5 cars.

A statement had been prepared by counsel, from the evidence, shewing that, including switching, inspection, freight, cartage, and storage, the loss on these 5 cars was \$1,350.85, and that, if the handling charges were deducted, the loss was \$1,062.54. The trial Judge said that he had allowed interest; and, if interest were added to the \$1,062.54, the result would be approximately \$1,115—the amount awarded.

*Appeal dismissed with costs.*

FIRST DIVISIONAL COURT.

JANUARY 31st, 1921.

WILLETT v. McCARTHY.

*Deed—Conveyance of Farm—Covenant for Quiet Possession Free from all Incumbrances save as Mentioned—Recital of Agreement for Sale of Standing Timber upon North Half of Lot—Reservation—Agreement in Fact Covering Part of South Half—Terms of Oral Bargain for Sale of Land—Knowledge of Purchaser—Action for Breach of Covenant—Construction of Covenant and Reservation—Finding of Trial Judge—Reversal on Appeal—Dismissal of Action.*