After the fire which consumed or damaged a quantity of grain very much in excess of the 20,000 bushels of the kind in question herein, the insurance companies, of which there were several interested in the loss, proceeded to deal with the matter. The underwriters took possession of the damaged grain and made a sale of it. The sale was not one which was advertised, but the representatives of the companies intimated to those whom they thought likely to purchase, that a sale would be made, and put it up at auction to those present at the time indicated.

It appears that the plaintiff had no notice of this sale. On the other hand, the defendants were present, made the highest offer for, and purchased the damaged wheat, afterwards selling and disposing of it. The plaintiff says he attempted to buy a quantity of the damaged grain, which he saw in a certain bin at the elevator, which he thought was uninjured, and would reasonably fill the contracts which he had made with the defendants. One of the defendants on the contrary says that he told the plaintiff he could take wheat from a particular bin if he watched it himself to see he was getting what he desired. I am unable to find on the evidence that any definite agreement as to this was come to between the parties after the fire.

The plaintiff, however, says that in the course of the claim made by the defendants on the insurance companies, and which was for a very large sum they practically treated all the wheat of the kind in question herein in the elevator at the time of the fire as their own, ignoring the contention which they now put forward, that the 3,000 bushels of wheat, claimed by the plaintiff should have been taken away by him, was his at the time of the fire and the loss of which should be borne by him. The plaintiff contends the defendants are now estopped from claiming that the wheat was theirs.

At the time of the fire the defendants say that they were unaware of the fact that the plaintiff had not withdrawn his 3,000 bushels from the elevator. Later, it was discovered that there was apparently more grain therein than they were claiming, and at first the discrepancy seemed to be 1,000 bushels, later 2,000, and finally the 3,000 bushels in question. There are expressions in some of the documents put in at the trial in which the defendants speak of their contract with the plaintiff on track Owen Sound, and that they will stand between the insurance companies and the plain-