

of her cargo; and on 29th May plaintiffs telegraphed to defendants: "Algonquin loading to-day due Goderich Monday morning."

Plaintiffs contend that defendants' manager McGaw thoroughly understood the method of trading as above outlined, and that the contract was made with reference to such custom or usage. Defendants rely on the phrase which is used in their telegram of 23rd May, "Price fixed date of shipment or sooner." Plaintiffs' manager says that he observed both of these statements, but paid no attention to them, as he did not consider that they added anything to the well understood meaning of the contract; and that in fact the contract was, according to his ideas, complete without them, and therefore he saw fit to ignore them. I think that he had no right to do so. I am of opinion that he ought to have at least inquired what defendants meant by annexing a new term in the alleged well understood method of dealing. It ought to have been clear to him that defendants intended the words to have some meaning, and I think that they had a meaning. If plaintiffs had refused to deliver wheat in accordance with the telegrams and letters, could defendants have successfully maintained an action? I think not. The answer would be, "You imposed a new term to which I never agreed."

In order that plaintiffs shall succeed, it becomes necessary to read into this contract the alleged custom that in a sale such as this there is an implied term that defendants in settlement for the cash wheat must supply the July option. A custom to be binding must be universal, and the evidence of the custom must be clear, cogent, and irresistible: *Kirchner v. Venus*, 12 Moo. P. C. 381; *Burke v. Blake*, 6 P. R. 250. If evidence of a custom inconsistent with the agreement entered into is tendered, it cannot be received: *Hayes v. Nesbitt*, 25 C. P. 101; *Marshall v. Jamieson*, 42 U. C. R. 115; *Hayton v. Irwin*, 5 C. P. D. 130; *Syers v. Jonas*, 2 Ex. 111. The evidence of usage must be distinct in order to affect the meaning of the terms of the contract, and the evidence must be clear and consistent, otherwise the plaintiff fails: *Bowes v. Shand*, 2 App. Cas. 455.

The alleged custom here was stated to be universal, but that expression was qualified by the statement that Mr. Crowe meant New York, Winnipeg, Chicago, and Minneapolis. It was not contended that it included Toronto, and