

Awde v. Dixon, 6 Ex. 869; *Hogarth v. Latnam*, 47 L.J.Q.B. 339, and *Ontario Bank v. Gibson*, 3 M.R. 406, 4 M.R. 440, as showing that they were not liable.

Held, following *Merchants Bank v. Good*, 6 M.R. 339, that the above cases are distinguishable and that the defendants were liable to the plaintiffs on the note.

The note, on its face, was regular without anything to suggest to an indorsee that there was any condition.

The defendants received full consideration for the notes, as they got the horse and shared amongst themselves all benefit of its services to the exclusion of Lee. After ascertaining that Lee was not to be a joint maker with them, the defendants did not repudiate the contract or notify McLaughlin Bros. to take the horse back or demand the return of their notes, but by keeping and using the horse they adopted the contract.

Although, without his name on the note, each of the 13 defendants became responsible for one-thirteenth of the amount instead of one-fourteenth, yet the share of each in the horse was correspondingly greater and the defence was more technical than really meritorious.

Wilson, for plaintiffs. *Munson, K.C.*, for defendants.

FERRY V. MANITOBA MILLING CO.

Dubuc, C.J.]

[July 12.]

Contract—Shipment—Place of weighing grain sold—Costs.

Action to recover the price of a car-load of wheat sold under a contract in writing containing the following terms: "Shipment 1st half October, Fort William weight, Government inspection."

The wheat was loaded in a car at Birney, a station of the Canadian Northern Railway, on 13th October. The shipping bill, prepared by the plaintiff, was dated the same day, but the car was not moved from the station until the 17th, when the shipping bill was signed by the train conductor. There was no agent of the railway company at Birney, but the plaintiff went to the defendants on the 14th and told them that the car was loaded. Defendants' manager only received the shipping bill on 19th October.

Held, following *Barnes v. Shand*, 2 A.C. 455, that the wheat had been shipped in time and that shipment means simply putting on board.

The car in question was, in the regular course of the traffic on the C.N.R., sent to Port Arthur, and the wheat was weighed