

Judgment appeal from, 14 B.C. Rep 224, reversed, DAVIES and IDINGTON, JJ, dissenting. Appeal allowed with costs.

McPhillips, K.C., for appellants. Travers Lewis, K.C., for respondent.

Ex. C.]

BOULAY v. THE KING.

[Feb. 15.

*Contract—Delivery of goods—Conditions as to quality, weight, etc.—Inspection—Rejection—Conversion—Sale by Crown officials—Liability of Crown—Deductions for short weight.*

The Minister of Agriculture of Canada entered into a contract with the suppliants for the supply of a quantity of pressed hay for the use of the British army engaged in the operations during the late South African war, the quality of the hay and the size, weight and shape of the bales being specified. Shipments were to be made f.o.b. cars at various points in the Province of Quebec to the port of Saint John, N.B., and were to be subject to inspection and rejection at the ship's side there by government officials. Some of the hay was refused by the inspector, as deficient in quality, and some for short weight in the bales. In weighing, at Saint John, fractions of pounds were disregarded, both in respect to the hay refused and what was accepted; there was also a shrinkage in weight and in number of bales as compared with the way-bills. The hay so refused was sold by the Crown officials without notice to the suppliants, for less than the prices payable under the contract and the amount received upon such sales was paid by the government to the suppliants. In making payment for hay accepted, deductions were made for shortage in weights shewn on the way-bills and invoices, and credit was not given for the discarded fractions.

*Held*, the CHIEF JUSTICE and DAVIES, J., dissenting, that the appellants were entitled to recover for so much of the amount claimed on the appeal as was deducted for shrinkage or shortage in the weight of the hay delivered on account of the government weighers disregarding fractions of pounds in the weight of the hay actually accepted and discharged from the cars at Saint John.

Per GIROUARD, IDINGTON and DUFF, JJ., CHIEF JUSTICE and DAVIES and ANGLIN, JJ., dissenting, that the manner in which the government officials disposed of the hay so refused amounted