1920
Feb. 21.

IN THE EXCHEQUER COURT OF CANADA.

BETWEEN

HIS MAJESTY THE KING, ON THE INFORMATION OF THE ATTORNEY-GENERAL OF CANADA,

PLAINTIFF;

AND

LONDON GUARANTEE AND ACCIDENT COMPANY LIMITED, AND JOSEPH GORBOVITSKY,

DEFENDANTS.

Canada Grain Act—Country elevators—Track buyer—Bonds, interpretation thereof—Interpretation of Statute—Penalty or liquidated damages.

G. having applied for a license (subsequently granted) to operate a country elevator under the *Canada Grain Act,* 2 Geo. V., 1912, ch 27, the Company defendant gave a bond in favour of plaintiff for the due and faithful compliance by G. of all enactments and requirements of the said Act and to secure the payment of any penalties to which he might become liable under the Act.

G. at the time of delivery to him of certain grain at the warehouse, and in compliance with section 157 of the Act, issued a *warehouse storage receipt* for the same. No *cash purchase ticket* and no storage receipt for special binned grain were ever issued. Subsequently, in some cases about one or two months after the issue of the storage certificate, G. bought this grain from the owners paying part cash, but made default in paying the balances and having so failed to pay, the Company defendant was sued as surety on the bond to recover the amounts so due.

Held, that G. by giving the warehouse storage receipt at the time of delivery of the grain to him had discharged all statutory duties as such licensee and had complied with the requirements of the Statute, and the purchase of the grain by him subsequently, not being done under the license, but in the exercise of his common law right, the bond in question did not cover such purchases, and was not such an act for the faithful performance of which the surety could be held liable on the bond.

2. That there being nothing in the Act prohibiting the operator of a country elevator from buying grain, (as in the case with the operator of a terminal elevator), to insert this inhibition in the statute by implication, would not be construing the Act of Parlia-

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ment, but would be altering it and enlarging the provisions which the Legislature had thought fit to make.

3. A track buyer, being by sub-sec. 2 of sec. 219 and sec. 2, sub-sec. "S" of the Act, 2 Geo. V., 1912, ch. 27, defined as one who buys in *car lots on track*, his act in purchasing grain which is not *in car lots on track*, but in a terminal elevator or other elevator or warehouse is not one within the scope of his license as such, and therefore the bond does not cover such a transaction.

4. That in as much as, mutuality of mistake cannot enable the parties to change the nature of a transaction, more particularly when it affects the rights of third parties, the fact that both vendor and purchaser believed that the grain was *on track* at the time of sale, would not justify the Court in treating it as such. *Non fatetur qui errat.*

5. That the fact that the sum in a bond is described as a penalty or as liquidated damages, is not conclusive;

The question of whether the sum mentioned in a bond is to be considered as a penalty or as liquidated damages in any given case is one of construction for the Court alone.

6. Where a bond was given for the due performance of statutory duties, of various kinds and importance, some of a *certain* nature and amount, some of *uncertain* nature and amount, and only one large amount is mentioned in the bond, the bond cannot be but a penalty bond, because as the amount mentioned in the bond cannot be regarded as liquidated damages in respect of some of the stipulations, it ought not to be so regarded in respect of the others.

AN Information, exhibited by the Attorney-General of Canada, seeking to recover from the defendant Company under the bonds furnished by them under the *Canada Grain Act*.

The facts are stated in the reasons for judgment.

The case was tried at Winnipeg on the 14th day of January, 1920, and was submitted upon the Admissions filed, no witnesses being produced.

Mr. E. L. Taylor, K.C., for plaintiff.

Mr. J. B. Coyne, K.C., and *R. K. Elliott* for defendant—The London Guarantee and Accident Company.

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AUDETTE, J., now (21st February, 1920) delivered judgment.

This is an Information, exhibited by the Attorney-General of Canada, whereby it is sought to recover the full amount of three bonds given, under the *Canada Grain Act*, 2 Geo. V., 1912, ch. 27, in the circumstances hereinafter mentioned.

The plaintiff has already, on the 16th November, 1919, obtained judgment by default against the defendant Joseph Gorbovitsky, for the full amount of the bonds, namely the sum of $19,200, and costs.

Therefore, the issue in the present controversy is limited exclusively as between the plaintiff and the defendant the London Guarantee and Accident Company, Limited, hereinafter, for brevity, called "the insurance company".

No oral evidence was offered at trial, but by consent of both parties, the case was submitted upon the Admissions then filed, and which are too voluminous to be here set out in full.

It is averred and admitted by the pleadings that Gorbovitsky on the 17th August, 1916, made an application to the Board of Grain Commissioners of Canada in compliance with section 153 of the *Canada Grain Act*, for a license to operate for the crop of 1916-1917, a *country* elevator at *Edenwold*, Saskatchewan, and in compliance with section 155, gave the bond required thereby through the above-mentioned defendant insurance company in the sum of $6,600, and a license was issued as requested.

And in a like manner Gorbovitsky, on the 9th August, 1916, made a similar application to operate a *country* elevator at Zehner, Saskatchewan,

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gave the required bond of $6,600, and a similar license was issued to him.

Then on or about the 28th July, 1916, the defendant Gorbovitsky made an application to the Board of Grain Commissioners for a license to operate, for the crop of 1916-1917, as a *track buyer* of grain, and in compliance with section 218, gave the required bond in the sum of $6,000, and a license as such issued to him on the 1st September, 1916.

Three cardinal questions arise in the present case: 1st. Whether the Crown, if entitled to recover under the bonds, should recover the full amount thereof, or only the amount of loss actually shown.

2nd. Whether, under the provisions of sections 157 and 180, in the case where the operator of a country elevator, *at the time of delivery of any grain* thereat, has issued a warehouse storage receipt, is bound when about a month or two after such delivery when purchasing such grain, still in his elevator, to give therefor a *cash purchase ticket,* or whether at that date he had discharged all statutory duties as such licensee to run a country elevator and is at large on his common law rights and can buy like any other individual not under such license?

3rd. What constitutes a track buyer under the Statute?

Dealing first with the question of the two bonds respecting the operation of the two country elevators, it must be said both the bonds and the licenses issued thereunder are absolutely identical, and that all that is said in relation to one applies respectively to the other.

This bond is what is termed (Halsbury, vol. 3 p. 80 par. 160) a double or conditional bond, in that it con-

sists of two parts: first, the obligation and secondly the condition, which parts read as follows:

Form B. 315
No. 439

"Country Elevator

"Know all men by these presents that we, Joseph "Gorbovitsky, of Regina, in the Dominion of Can- "ada, and Province of Saskatchewan, hereinafter "called the principal and the London Guarantee and "Accident Company, Limited, of London, England, "hereinafter called the Surety, are respectively held "and firmly bound unto Our Sovereign Lord the "King, his heirs and successors, in the respective "penal sums following, that is to say: The Principal "in the sum of Sixty-six hundred dollars of lawful "money of Canada, and the Surety in the sum of "Sixty-six hundred dollars of like lawful money to "be paid to Our Sovereign Lord the King, His heirs "and successors, for which said payment well and "faithfully to be made we severally and not jointly "or each for the other, bind ourselves and our re- "spective heirs, executors, administrators, success- "ors and assigns firmly by these presents, sealed "with our respective seals, dated the first day of "September, in the year of our Lord one thousand "nine hundred and sixteen, and in the 7th year of "His Majesty's reign.

"Whereas the Principal has applied for one coun- "try elevator license under the hand and seal of the "Board of Grain Commissioners for Canada, by "which, when issued, the Principal will be authorized "and empowered to carry on the business of a coun- "try warehouseman at such place or places as are

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"set forth in the Schedule written on the back of this "sheet which is made a part of this Bond, from the "first day of September, 1916, to the thirty-first day "of August, 1917, both days inclusive.

"And this bond is given in pursuance of the *Can-"ada Grain Act,* and amendments thereto.

"Now the condition of this obligation is such that "if upon the granting of such license the Principal "shall duly keep books and accounts, insure grain, "issue and deliver receipts and tickets, keep, store "and deliver grain, render all accounts, inventories. "statements and returns prescribed by law, pay all "penalties which the Principal is or may become li-"able to pay under the provisions of the said Act, "and of such other Act or Acts as may hereafter be "in this behalf enacted by the Parliament of Can-"ada, and shall well, truly, faithfully and unreserv-"edly comply with all the enactments and require-"ments of the said Act, or of any Act or Acts, as "aforesaid, and of any Order-in-Council, depart-"mental or other regulation made by competent au-"thority according to their true intent and meaning "as well with regard to such books, accounts, insur-"ance, delivery of receipts and tickets and the keep-"ing, storing, delivering of grain, the rendering of "accounts, inventories, statements, returns and pay-"ment of penalties as to all other matters and things "whatsoever referred to or required of the Prin-"cipal by the said Act or Acts and Orders-in-Coun-"cil and regulations whatsoever, then this obligation "shall be void and of no effect, but otherwise shall "be and remain in full force and virtue."

Then a license was issued in the following terms:

"The Department of Trade and Commerce

Form B. 322

" Western Inspection Division.

"License No. 892.

"License to operate a country elevator or ware-"house.

"To whom it may concern:

"Application having been made as required by the "Statute herein cited Joseph Gorbovitsky, of Re-"gina, Saskatchewan, are hereby licensed to operate "a country elevator at Edenwold, Sask., as described "in the said application, he having filed the neces-"sary bonds, and paid the License Fee of Five Dol-"lars under the provisions of the *Canada Grain Act,* "and amendments thereto, on the following condi-"tions:

"1st. This License shall expire on the thirty-first "day of August, 1917.

"2nd. If any elevator or warehouse is operated in "violation or in disregard of the Law, the Li-"cense shall, upon due proof thereof after pro-"per hearing, and notice to the Licensee, be re-"voked by the Board.

"Issued at Fort William, Ont., this 2nd day of "September, 1916.

"C. BIRKETT,

(SEAL) "Secretary, Board of Grain Commissioners

"This License is not transferable."

As a prelude to answering the first question it must be found whether or not the sum mentioned in the bond to be paid, on a breach, is a penalty or liquidated damages, and on this distinction between

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liquidated damages and penalty reference should be had to Halsbury, vol. 3, page 96, and vol. 10, page 328, et seq.

Both the bond and the Act (sec. 155) make use of the adjective *penal* in qualifying the sum mentioned in the bond. However, as laid down by 3 Halsbury, page 96, par. 198: "The fact that the sum is des-"cribed as a penalty or as liquidated damages is not "conclusive. Indeed it is almost immaterial." and also at page 329, par. 605, vol. 10: "(2) But though "the parties themselves call the sum to be paid liqui-"dated damages, and even if they go so far as to "state in the contract that it is not a penalty, this "will not prevent the court in a proper case from "holding that it is in fact a penalty." And "(1) "Where the parties themselves call the sum made "payable a penalty; the *onus* lies on those who seek "to show that it is liquidated damages to show that "such was the intention."

There is in this case no such evidence. And again as said in Halsbury "whether the sum is a penalty or "liquidated damages in any given case is a question "of construction for the judge alone."

Having disposed of the effect of the word "*penal*" used in the description of the bond, it is now of importance to find the rule to decide as to whether or not the bond is in the nature of a penalty or liquidated damages. See Halsbury, vol. 3, p. 96:

"(2) Where the condition depends upon the per-"formance of one act or the happening of one event "only, and the sum in which the obligor is bound is "not largely in excess of the possible damages which "may be sustained by the breach, it is *primâ facie* "liquidated damages.

"(3) Where the amount of the damages sustained "by breach of the condition must necessarily be "small in proportion to the sum in which the obligor "is bound, the sum is a penalty.

"(4) Where the condition is for the performance "of several acts, or happening of several events, "some of which are of serious and others of trifling "or less serious importance, the sum in the obliga-"tory part of the bond is a penalty." See also Hals. vol. 10, pp. 330 et seq.

Approaching in that light the consideration of the bond in question, it is quite manifest that the conditions of the bond consist in the performance of many acts, of which some may be of great, while others are of trifling importance. If, for instance, the warehouseman had been condemned, upon summary conviction, to pay the sum of $10 or $25 as provided by some of the sections (secs. 236 to 245) of the Act, it could not be contended—especially when the bond itself provides specifically for the payment of "all "penalties which the Principal is or may become lia-"ble to pay under the provisions of the said Act"—that he should in addition thereto or in satisfaction of the said sum of $10 or $25, as the case may be, for the breach of which he was condemned under summary conviction, pay the total amount of the bond. It must be consonant with the loss suffered.

The defendants under the bond are liable for all the penalties determined upon summary conviction, and any loss sustained, by the breach of any of the conditions therein mentioned, and not for the full amount of the bond in the case of a breach of trifling importance.

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The bond was given by the obligor, with the Principal, to the obligee for the due performance of the statutory duties attaching to the warehouseman of a country elevator, and these duties being of various kinds and importance, some of a *certain* nature and amount, some of *uncertain* nature and amount, and only one large amount is mentioned in the bond, the bond cannot be but a penalty bond, because as the amount mentioned in the bond cannot be regarded as liquidated damages in respect of some of the stipulations, it ought not to be so regarded in respect of the others.

Therefore the bond is a penalty bond. In a case of a breach of trifling importance, only the actual loss is recoverable, and not the full amount of the bond. The liability will be the loss in respect of the breach, which must not be *extended* beyond its legal operation.[1]

That brings us to the second question submitted.

In all of the thirteen cases coming under this head, and mentioned in the Admissions above referred to, in compliance with sec. 157 of the *Canada Grain Act, at the time of the delivery* of the grain, at the country elevator, the warehouseman issued a *warehouse storage receipt* for the same. In no case was there either a *"cash purchase ticket"* or a storage receipt for special binned grain issued at such time. Therefore the question, which was discussed at trial, with respect to the redeeming a "cash purchase ticket" as provided by sec. 160, does not arise.

1 Pollard v. Porter, et al. (1855), 69 Mass. (3 Gray) 312; U. S. v. Gurney et al., (1808), 4 Cranch's R. 332; Pond v. Merrifield, (1853), 66 Mass. (Cush.) 181; Mure v. Wilyes, (1810), Pyke's R. 61; Patterson v. Farran, (1811), 2 R. J. R. (Que.) 180; Kemble v. Farren, (1829), 6 Bing., 141.

A brief summary of these cases may be given, as follows:

Kennedy—Delivery of grain in January and February, 1917, storage receipt did not show *gross weight, grade* and dockage. Sold in May following to Gorbovitsky, and received a cheque, which was afterwards dishonoured, in payment of unpaid balance claimed herein.

J. W. Hubick—Delivery in February, 1917, No *gross* weight and dockage shown on storage receipt. Sold in July following for which he received a cheque, which was afterwards dishonoured, in payment of unpaid balance claimed herein.

C. Hubick—Delivery in November, 1916. Storage certificate did not *show gross* weight or dockage. Received a cheque, which was afterwards dishonoured, in payment of unpaid balance claimed herein.

Wilson—Delivery in November, 1916. Storage certificate did not show gross weight, dockage or grade. Gorbovitsky paid $1,681 on account of $1,957, and told him he could not give a cheque at that time for the balance which is still unpaid and for which claim is made herein.

Redgrave—Delivery of grain in March, 1917. Storage receipt does not show gross weight, dockage, or grade. Grain sold to Gorbovitsky in June following for $655.20, upon which he paid $544, and said he could not then give him cheque for unpaid balance which is herein claimed.

Bennett—Delivery in March, 1917. Storage certificate does not disclose gross weight, dockage or grade. Sold in May following for $1,179.75, upon which $1,074 were paid, leaving an unpaid balance for which claim is made herein.

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Boulding—Delivery in April and May, 1917. Sold at end of May or beginning of June for $2,774.60, upon which $1,100 was paid, and was told at time of sale a cheque could not be given, and it was agreed the unpaid balance claimed herein, was to be remitted at some subsequent date.

Gelhorne—Delivery in November and December, 1916, and May, 1917. Sold in June, 1917, for $2,795.37, upon which he received $1,000, leaving a balance of $1,795.37, which was to be paid in two or three weeks, and a cheque, which was afterwards dishonoured, was given in July for the unpaid balance claimed herein.

Hoffman—Delivery during May, 1917. Sold on the 30th May, and a cheque which was afterwards dishonoured issued for unpaid balance claimed herein.

Tiefenbach—Delivery during May, 1917. Sold on 26th May, and was given a cheque which was afterwards dishonoured, in payment of the purchase price claimed herein.

Moss—Delivery prior to June, 1917. Sold on 20th June, 1917, and received a cheque, which was afterwards dishonoured, for small unpaid balance claimed herein.

Mang—Delivery during February and March, 1917. Sold about 23rd May, 1917, and received cheque for unpaid balance when told to keep cheque for a little while, that there was no money to pay the cheque, but that funds were expected shortly. The cheque was subsequently dishonoured and this unpaid balance is claimed herein.

Frombach—Delivery during March and April, 1917. Sold sometime in May and received a cheque,

which was afterwards dishonoured, in payment of unpaid balance claimed herein.

It has already been said that a *warehouse storage receipt* was in every case issued at the time of the delivery.

One must also bear in mind it was stated, in the course of the argument of Mr. Taylor, that there was no question arising about the grade, "that it was admitted, they all knew it.

Then there remains this small charge that in some cases the storage receipt did not disclose the gross weight and the dockage. While that is recited in the admission, it does not appear that any of the claimants quarrelled with the quantity of dockage, and their claim is made without any complaint in that respect—they impliedly admit the correctness of the same, and no loss or damage was suffered thereby. Moreover, that would appear to be *de minimis*, especially when the statutory *forms* were used and when you have the net weight in each storage certificate—and there are cases when there would be no dockage. No evidence has been adduced that there should be dockage in the cases where complaint is made, the evidence being silent on that question.

I must find, under the circumstances and the evidence, that the defendant Gorbovitsky in all of those thirteen transactions, complied with the requirements of the statute, issuing at the time of the delivery, as provided by 2 Geo. V. 1912, ch. 27, sec. 157, a warehouse storage certificate.

There is no inhibition placed by the statute upon the operator, of a country warehouse whereby, after having issued such storage certificate in compliance with sec. 157, to prevent him from buying, as is the case of the operator of a terminal elevator whereby

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the latter is specifically forbidden to do so by sec. 123 of the Act.

It is quite plain, without indeed any shade of ambiguity, that no restriction exists in respect of buying or selling grain after its delivery, under the provisions of sections 157 and 160, and it would be making a material addition to the statute to place such a construction upon these two sections. To insert this inhibition in the statute by implication, would not be construing the Act of Parliament, but it would be altering it and enlarging the provisions which the Legislature had thought fit to make with respect to the subject matter.[1]

"If the words of the statute are in themselves pre-"cise and unambiguous, then no more can be neces-"sary than to expound those words in their natural "and ordinary sense."[2]

From the very significant fact, that the operator of a terminal elevator, which is indeed very different from a country elevator, is prevented by the Act itself from buying or selling grain, and that the Act is quite silent in that respect when dealing with the country elevator, it is quite obvious, under the maxim of *"Expressio unius est exclusio alterius"* that the Legislature had never the intention of placing a restriction upon the operation of a country elevator in that respect.

An ordinary grain dealer, outside of elevator operators, track-buyers, and commission merchants, who have special duties assigned to them under the Act, does not require a license or to be bonded to carry on his business.

[1] Beal, Rules of Interpretation, 2nd ed. 335.

[2] The Sussex Peerage case, (1844), 11 Cl. & F. 85, 143.

The operator of a country elevator after discharging his statutory duties, as above mentioned, has always his common law rights subsisting to buy or sell, provided such rights are not in derogation of any of the provisions of the statute. Nothing short of legislation could take away these common law rights.

Therefore, I find that the bonds in question do not cover any of the purchases or sales above mentioned.

Coming now to the third question submitted in respect of the track operator, it will be convenient to set out in a summary manner the facts arising in that connection.

On or about the 28th July, 1916, the defendant Gorbovitsky made an application to the Board of Grain Commissioners, for a license to operate for the crop year of 1916-1917, under the provisions of section 218, of the Act, as a *track-buyer* of grain, and entered into a bond of $6,000; whereupon, on the 1st September, 1916, a license was issued to him to carry on the business as such track-buyer, the whole as more fully set forth in paragraphs 8, 9 and 10 of the Information.

Now it might be casually said that the bond given by the track-buyer is very different from that given by the operator of a country elevator. The track-buyer gives security for the payment of the purchase money, while the operator of a country elevator gives security in the main to carry on his business in the manner mentioned by the statute, and the farmer receives no help from such a bond when he sells to the operator of the country elevator at any time after the delivery of his grain.

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The main, and in the result the only, question to be decided under this head is whether, in the case submitted, the grain in question was bought by a *track-buyer in car lots on track.*

In the month of April, 1917, A. W. Vanstone, who is the owner and operator of a grain elevator and flour mill in Regina, loaded two carloads of wheat from his elevator in cars Numbers 28,266 and 505,-865, which cars were respectively unloaded into terminal elevators at Duluth and Superior on April 23rd and May 1st, and terminal warehouse receipts were issued therefor.

Vanstone sold these two carloads of wheat to Gorbovitsky on May 5th and May 9th respectively for the total price of $6,234.32, and received $6,000 on account and a cheque of $234.32 for the balance which still remains unpaid.

Now, under the evidence, which is part of the admission filed, Vanstone says that at the time of the sale of these two cars he "imagined the wheat was "not unloaded, that it would be on the track, but "he is not sure of that. He did not know that himself," and Gorbovitsky, in his testimony, supports and corroborates Vanstone's evidence, and adds he did not know whether these cars had been out-turned at Duluth when the sale took place.

It is well not to overlook that Vanstone who was the operator of a flour mill and the operator of an elevator who would be presumed to know all his rights under the *Grain Act,* did not ask from Gorbovitsky at the time of this sale, for the statutory "track-buyer's purchase note," and the inference would be he did not himself treat the transaction as that of a track purchase.

Upon this evidence, however, the Crown claims (and the insurance company contends to the contrary) that Gorbovitsky and Vanstone believed the grain was on the track at the time of the sale and that it should be treated as such.

I am unable to accede to this contention, since the sale was actually made at a time when the wheat was not in *car lots on track;* but actually turned into terminal elevators. Moreover, mutuality of mistake cannot enable the parties to change the nature of the transaction and much more so where it would affect the rights of third parties. *Non fatetur qui errat.*

Then during the month of May, Vanstone also sold to Gorbovitsky, besides the two above mentioned cars, a carload of feed wheat which was then in his elevator at Regina, and which he subsequently loaded in car No. 55,586, and for which Gorbovitsky gave his cheque.

These three cheques, as well as a draft for the same amount which was duly accepted by Gorbovitsky, were dishonoured, and these unpaid amounts are claimed herein.

This sale of wheat feed was made of grain actually in the elevator and not in *car lots on track.*

Now, we must find, what, under the statutes constitutes a "track-buyer". The sections of the Act which specifically deal with a track-buyer are sections 218, 219, 220 and subsection (s) of section 2.

This subsection (s), which is part of the interpretation section of the Act, defines a track-buyer, as follows: "(s) 'track-buyer' means any person, firm or company who buys grain in car lots on track". And subsection (2) of section 219, as a prelude to defining the duties of a track-buyer, states as a

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condition precedent "Every person *who buys grain on track in car lots.*"

Maxwell, on Statutes, 5th ed. at page 4, et seq., lays down the rule of interpretation for a case like the present: "The grammatical and ordinary sense "of the words is to be adhered to . . . . When the "language is not only plain but admits of but one "meaning, the task of interpretation can hardly be "said to arise," etc.

We have quite a long *catena* of decisions upon this preposition "on", as found in section 20 of the *Exchequer Court Act,* both by this Court and the Supreme Court of Canada. In re *Chamberlin v. The King,*[1] it was held that the words "on a public work" in sec. 20 of the *Exchequer Court Act,* R .S. C. 1906. ch. 140, "are descriptive of the locality, and to make "the Crown liable etc., ... such property must be "situated *on* the work when injured." His Lordship, Sir Louis Davies, at page 353, says: "With the policy "of Parliament we have nothing to do. Our duty "is simply to construe the language used, and if "that construction does not fully carry out the inten- "tion of Parliament, and if a wider and broader "jurisdiction is desired to be given the Exchequer "Court the Act can easily be amended." This decision has been endorsed and followed by the Supreme Court of Canada in several other cases.[2]

Accepting this method and manner of construction it must be found that the purchases in question, to come within the statute, must be made of *"grain in car lots on track"*. In no one of the three cases

[1] (1909), 42 Can. S. C. R. 350.

[2] Paul v. The King, (1906), 38 Can. S. C. R. 126; The Hamburg American Packet Co. v. The King, (1902), 33 Can. S. C. R. 252; Olmstead v. The King, (1916), 30 D. L. R. 345, 53 Can. S. C. R. 450; Arsenault v. The King (1916), 16 Can. Ex. C. R. 271, 278, 32, D. L. D. 622, 625, and other cases.

under consideration did the track-buyer buy grain *on* track. On one occasion the grain of the two cars had already been discharged in terminal elevators, and in the last case the grain was in Vanstone's elevator at the time of the sale.

Therefore, the sale of these three cars of grain does not amount to the case of a track-buyer buying grain in car lots *on* track, as defined by the statute, and further does not come within the bond in question.

Here again it may be said, as was said with the thirteen other cases, that a track-buyer after discharging his statutory duties, when *buying grain in car lots on track,* retains his common law rights, provided such rights are not in derogation of any of the statutory provisions.

Following the above mentioned decisions in respect of the words *on* a public work, I must find that the purchase in question was not of grain *in car lots on track,* and therefore that the purchase in question does not come within the ambit of the statute.

I have answered these three questions against the contentions of the Crown, although in the view I have ultimately taken of the case, it had become unnecessary to answer the first question.

Much as I feel like protecting the farmer who accepted these worthless cheques in good faith, the statute does not allow me to extend the relief sought. If Parliament intended to protect cases like those in question, legislation can be resorted to, if the legislator see fit to do so.

The action is dismissed with costs.

Solicitor for plaintiff: *E. L. Taylor,* K.C.

Solicitors for the London Guarantee and Accident Company, Limited: *Coyne, McVicar & Martin.*