

might be on an appeal from the award in the case of a regular arbitration; but it is not necessary to express an opinion as to it in this particular case: see *Chichester v. McIntire* (1830), 4 Bligh N.R. 78.

With regard to the remaining questions dealt with by the learned trial Judge, I think that his conclusions are correct and cannot be successfully attacked.

The appeal should, therefore, be dismissed with costs.

SEPTEMBER 21ST, 1914.

***LEMON v. GRAND TRUNK R.W. CO.**

Railway—Carriage of Perishable Goods—Breach of Contract—Wrongful Delivery—Condition of Goods on Delivery—Damages—Cause of Deterioration in Value—Real Loss Caused by Deprivation of Control—Nominal Damages—Reference as to Other Damages—Costs.

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., 5 O.W.N. 813.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, J.J.A.

D. L. McCarthy, K.C., for the appellants.

C. A. Moss, for the plaintiff, the respondent.

The judgment of the Court was delivered by HODGINS, J.A.:—Action for damages for wrongful delivery of 300 cases of eggs. The eggs in question arrived in Toronto, and the car containing them was put on the Harris Abattoir Company's siding, where it was found by them on Monday the 17th February, 1913. The latter company, having bought eggs from the respondent, and finding these on the track, assumed to be entitled to receive them and unloaded them that morning into their warehouse. No draft or bill of lading had then appeared, and nothing had been said in the bargain about the time of payment. The draft was presented on Tuesday morning the 18th February by the Royal Bank with the bill of lading attached. The draft was left with

*To be reported in the Ontario Law Reports.