Slater v. Canada Central R. W. Co., 25 Gr. 363. No harm can accrue to the defendant in the counterclaim from the company asking too much, where the facts upon which the company rely are set out, and the evidence to prove such facts is admissible in another part of the case.

Moreover, the express words of Con. Rule 273 allow the relief to be claimed in the alternative, which is what has been done in this case.

The appeal will be dismissed with costs to the defendant company in any event of the action.

DIVISIONAL COURT. MAY 10TH, 1910.

*LAURIE v. CANADIAN NORTHERN R. W. CO.

Railway — Carriage of Goods — Failure to Deliver — Refusal of Connecting Carrier to Complete Carriage—Return of Goods and Money Paid for Freight — Contract—Shipping Bill — Conditions Relieving Railway Company—Common Carriers—Arrangement with Transport Company—Remedy in Tort — Railway Act, sec. 284.

Appeal by the plaintiff from the judgment of MAGEE, J., dismissing the action with costs.

The plaintiff, a lumber manufacturer of Parry Sound, delivered to the defendants at their siding at James Bay Junction, in the district of Parry Sound, a car of dressed lumber, to be forwarded by the defendants to Gowganda station, "subject to the terms and conditions . . upon the other side of the shipping bill which is delivered by the company and accepted by the consignor . . . as the basis upon which this receipt is given for the said property, and it is agreed to by the consignor as a special contract in respect thereof."

The freight to Gowganda—$643.45—was paid by the plaintiff to the defendants.

Among the conditions indorsed on the shipping receipt were the following:—

"3. The company is not to be liable for damages occasioned by delays caused by storms, accidents," etc.

* This case will be reported in the Ontario Law Reports.