

SECOND DIVISIONAL COURT.

MARCH 1st, 1918.

CANADIAN BARTLETT AUTOMOBILE CO. LIMITED v.
GRAND TRUNK R. W. CO.

Railway—Carriage of Goods—Contract—Bill of Lading—Conditions—Liability for Delivery to Unauthorised Person—Loss or Damage to Goods not Resulting—Real Loss—Deprivation of Control—Damages.

Appeal by the plaintiffs from the judgment of the County Court of the County of Perth in an action to recover \$755, the amount of a draft, because, in breach of their agreement as carriers of an automobile, the defendants delivered it, without the order of the bank, the consignees, to some one who had retained possession of it. The County Court awarded the plaintiffs \$25, and by the appeal they sought to increase the amount.

The appeal was heard by MACLAREN, J.A., LENNOX, J., FERGUSON, J.A., and ROSE, J.

R. S. Robertson, for the appellants.

W. E. Foster, K.C., for the defendants, respondents.

H. S. White, for the third party, the Meaford Transportation Company, respondents.

The judgment of the Court was read by ROSE, J., who said that the plaintiffs, who carried on business at Stratford, sold a motor car to one Purvis, who lived at Gore Bay, Manitoulin Island. The car having been destroyed by fire, the plaintiffs, in the hope that Purvis would accept another, of a later model, shipped a car to Providence Bay, the landing place on Manitoulin Island, consigned to the order of a bank, and forwarded the bill of lading to the bank, with a draft upon Purvis for \$755 attached, instructing the bank to deliver the bill of lading to Purvis only upon payment of the draft.

The agreement for the sale of the car that had been destroyed contained a warranty that the car would in certain particulars compare favourably with certain other well-known makes of cars; and there was a provision that the vendors' "demonstrator" would deliver the machine. To demonstrate the qualities of the second car, the plaintiffs sent their secretary, Steepe, to Manitoulin Island. They also notified their own sales-agent on the Island that, while they felt that they must have payment before delivery to Purvis, Steepe would "be right on the job to take the