

tents, was subsequently destroyed by fire ; but there had always been in store a sufficient quantity of wheat to answer plaintiff's receipt.

*Held*, that the receipt and evidence in connection therewith showed there was a bailment of the wheat, and not a sale.

Negligence on the part of the defendant was attempted to be set up, but the evidence failed to establish it.

*South Australian Ins. Co. v. Randall*, L.R. 3 P.C. 101, distinguished.

*Elg'n Myers* for the plaintiff.

*Aylesworth*, Q.C., for the defendant.

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Div'l Court.]

MILLOV *v.* GRAND TRUNK RAILWAY CO.

[March 4.]

*Railways—Carriers—Liability as.*

The plaintiff delivered a quantity of apples to defendants at their warehouse for the purpose of shipment by defendants' railway, and on a sufficient quantity being delivered to fill a car applied for a car, and was promised one at a named date. The defendants failed to furnish a car at the date specified, and, a fire occurring, the apples were destroyed.

*Held*, ROSE, J., dissenting, that the responsibility of the defendants was that of carriers and not of warehousemen ; and therefore they were liable for the loss sustained by the plaintiff.

*Fullerton*, Q.C., for the plaintiff.

*Osler*, Q.C., for the defendants.

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Div'l Court.]

MCCLELLAN *v.* MCCAUGHAN.

[March 4.]

*Power of attorney—Sale of land—Authority of attorney.*

Acting under a power of attorney from the defendant, empowering him to attend to and transact all defendant's business in connection with her properties, both real and personal, and generally to do anything he might think necessary, etc., in the premises, as fully and effectually as if she were personally present, the attorney entered into a contract for the sale of defendant's farm to the plaintiff, and a deed was executed by defendant, and delivered over to the attorney for the purpose of carrying out the sale. The terms of purchase were that plaintiff was to pay off certain encumbrances, make a cash payment, and execute a mortgage to secure the balance of the purchase money, which he did, making the cash payment and mortgage to the attorney as trustee for the defendant, and which the attorney was willing to hand over to the defendant on her delivering up possession, which she refused to do.

*Held*, that the plaintiff's deed could not be questioned, and that he was entitled to possession of the land.

*H. J. Scott*, Q.C., for the plaintiff.

*E. D. Armour*, Q.C., for the defendant.