

in favour of L. for the whole amount. On appeal to the Supreme Court of Canada,

*Held*, reversing the judgments of the Courts below, that in the exercise of ordinary care, L. could have safely gained the platform by passing through the car forward, and that the accident being wholly attributable to L's own default in alighting as he did, he could not recover. Fournier, J., dissenting.

*Per* Gwynne, J.—Every man travelling by rail in this country must have known that it was not the way he should have alighted, or by which there was any necessity for his so alighting, or was ever intended that he should alight.

Appeal allowed with costs.

*Brown, Q. C.*, for appellants.

*Lavery*, for respondent.

24 June, 1893.

STEWART v. ATKINSON.

Quebec.]

*Sale of deals—Contract—Breach of—Delivery—Acceptance—Quality—Warranty as to—Damages—Arts. 1073, 1473, 1507 C. C.*

In a contract for the purchase of deals from A. by S. *et al*, merchants in London, it was stipulated *inter alia*, as follows:—"Quality—Sellers guarantee quality to be equal to the usual Etchemin Stock and to be marked with the Beaver Brand," and the mode of delivery was f. o. b. vessels at Quebec, and payment by drafts payable in London 120 days sight from date of shipment. The deals were shipped at Quebec on board vessels owned by P. & Bros. at the request of P. & P. intending purchasers of the deals. When the deals arrived in London they were inspected by S. *et al*, and found to be of inferior quality, and S. *et al*, after protesting A. sold them at reduced rates. In an action of damages for breach of contract,

*Held*, reversing the judgment of the Court below, that the delivery was to be at Quebec, subject to an acceptance in London, and that the purchasers were entitled to recover under the express warranty as to quality, there being abundant evidence that the deals were not of the agreed quality. Arts. 1507, 1473, 1073 C. C. The Chief Justice and Sedgewick, J., dissenting.

Appeal allowed with costs.

*Fitzpatrick, Q. C.*, and *Ferguson, Q. C.*, for appellants.

*Casgrain, Q. C.*, for respondent.