

Full Court.]

[March 4.]

FERRIS v. CANADIAN NORTHERN RY. CO.

*Railway company—Loss of wheat shipped by railway—Railway Act, 1888, s. 246, s.-s. 3—Weights and Measures Act, R.S.C. c. 104, s. 21—Manitoba Grain Act, 63 & 64 Vict. (D.), c. 39, s. 9—Indorsement of bill of lading.*

Plaintiff's claim was for loss of wheat shipped by him in a freight car of defendants' from Oakland Station to Port Arthur. He proved to the satisfaction of the trial judge that he had loaded 1,270 bushels on the car; but the defendants only accounted to him for 800 bushels and 10 pounds. After arrival of the car at Port Arthur the weighmaster there had given his certificate, under s. 9 of the Manitoba Grain Act, 1900, shewing the amount of wheat to be only 800 bushels and 10 pounds. After shipment plaintiff indorsed the bill of lading to a bank for collection. The number of bushels put into the car had been ascertained by bag measurement.

*Held*, 1. The loss of wheat was caused either by the negligence or omission of the defendants or their servants, and the defendants were precluded by s.-s. 3 of s. 246 of the Railway Act, 1888, from relying on the 4th condition indorsed on the bill of lading exempting them from liability for any deficiency in weight or measurement: *McMullen v. Grand Trunk Ry. Co.*, 16 S.C.R. 543, and many other cases.

2. The certificate of the weighmaster at Port Arthur was only prima facie evidence of the weight and had been fully rebutted by the evidence.

3. Notwithstanding his indorsement of the bill of lading passing the property in the wheat to the consignee, the plaintiff still such an interest in it as to entitle him to bring an action for the loss: *Leggett on Bills of Lading*, 626; *Brill v. Grand Trunk Ry. Co.*, 20 U.C.C.P. 440; *Great Western Ry. Co. v. Bagge*, 15 Q.B.D. 625.

4. As the contract between plaintiff and defendants was for carrying the wheat by the carload, and not by the bushel, s. 21 of the Weights and Measures Act, R.S.C. c. 104, did not apply to prevent plaintiff from recovering from the loss.

Verdict for plaintiff affirmed with costs.

*Anderson*, for plaintiff. *Munson*, K.C., and *Laird*, for defendants.