

The Ontario Weekly Notes

Vol. I.

TORONTO, JUNE 22, 1910.

No. 39.

COURT OF APPEAL.

JUNE 15TH, 1910.

*ALLEN v. CANADIAN PACIFIC R. W. CO.

*Railway—Carriage of Goods—Destruction — Liability — Tort—
Special Contract between Express Company and Shipper—Ex-
emption—Application for Benefit of Railway Company—Con-
tract between Express Company and Railway Company.*

Appeal by the defendants from the judgment of RIDDELL, J., 19 O. L. R. 510, in favour of the plaintiff, in an action to recover the value of goods destroyed in the course of carriage.

The appeal was heard by MOSS, C.J.O., OSLER, GARROW, and MACLAREN, J.J.A.

Wallace Nesbitt, K.C., and Angus MacMurchy, K.C., for the defendants.

G. F. Shepley, K.C., and G. W. Mason, for the plaintiff.

The judgment of the Court was delivered by GARROW, J.A.:—The plaintiff, desiring to send a trunk of valuable samples from Toronto to Quebec, sent it in the usual way to the Dominion Express Co. by one of their carters, receiving the receipt set out in the judgment of Riddell, J. The plaintiff, either through ignorance of the necessity or from oversight, failed to place a value upon the articles contained in the trunk, with the result that such value, under the terms of the receipt, was fixed as between him and the express company at \$50.

The express company are an independent company operating upon the lines of railway of the defendants in Canada, under a