

APPELLATE DIVISION.

SEPTEMBER 21ST, 1914.

DOMINION TRANSPORT CO. v. GENERAL SUPPLY CO.

7 O. W. N. 55.

*Contract—Cartage Charges—Liability of Consignor—Evidence—Estoppel—Course of Conduct—Appeal—Dismissal of Action.*

SUP. CT. ONT. (1st App. Div.) *held*, in an action against consignors for city cartage charges that there was no evidence of any employment of plaintiffs by defendants and that the action must be dismissed.

Judgment of SENIOR, J., CARLETON Co., reversed.

G. G. S. Lindsey, K.C., for appellant.

S. Denison, K.C., for respondent.

Appeal by the defendant from the judgment of the County Court of the county of Carleton dated 21st April, 1914, which was directed to be entered by the Senior Judge at the trial before him sitting with a jury on that day.

The action was brought to recover the respondent's charges for transporting machinery from the Ottawa station of the Canadian Pacific Railway to the West End Construction Co., afterward referred to as the construction company, in that city.

HON. SIR WM. MEREDITH, C.J.O.:—The machinery had been purchased by the construction company from the appellant and was shipped from Prescott to Ottawa by the Canadian Pacific Railway consigned to the appellant. By the terms of the contract of purchase the property in the machinery remained in the appellant until the price of it was paid and the purchaser was entitled to possession of it until default in payment.

On the arrival of the machinery at Ottawa the advice note was handed to the respondent, a cartage company which delivers goods which arrive at Ottawa by the Canadian Pacific Railway to the persons to whom they are consigned and a duplicate or copy of the advice note was sent to the respondent.

Upon the advice note the words "no cartage" were stamped, which means, as the evidence establishes, that the shippers do not undertake responsibility for the cartage charges.

The construction company was desirous of obtaining quick delivery of the machinery and its representatives,