

property destroyed or damaged by fire. The buildings here referred to are those mentioned in the application and even if the words "property destroyed or damaged by fire" apply to the automobile, or if the claim itself applies to the automobile which was insured at large, there is no evidence that "the buildings are not the property of the assured" so that the plaintiff's claim is not limited to 70 per cent. of his loss.

For these reasons I think the appeal should be dismissed with costs.

HON. MR. JUSTICE MAGEE, HON. MR. JUSTICE SUTHERLAND, and HON. MR. JUSTICE LEITCH, agreed.

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SUPREME COURT OF ONTARIO.

FIRST APPELLATE DIVISION.

MARCH 16TH, 1914.

SWALE v. CANADIAN PACIFIC R.W. CO.

6 O. W. N. 93.

*Railways — Action for Conversion of Goods Entrusted to Them—Railway Act (Can.) s. 345—Sale to Realize Charges—Negligence of Auctioneer—Loss—Third Parties—Limitation of Liability—Want of Endorsement of Bill of Lading—Right of Third Parties to Set up—Liability of Railway—Involuntary Bailee—Statutory Bailee—Statutory Duties—Onus—Proof of Delivery to Defendants—Unsatisfactory Evidence—New Trial—Set-off—Costs.*

LENNOX, J., 24 O. W. R. 224 gave judgment for plaintiffs against defendants, a railway company, as common carriers for \$1,066.40 damages for loss or conversion of certain goods entrusted to them and for defendants against the third parties, auctioneers, for the same amount, as the loss had occurred by reason of the negligence of the latter, to whom the goods were entrusted for sale under sec. 345 of the Railway Act, in order to realize certain charges due and owing by plaintiffs to defendants.

SUP. CT. ONT. (2nd App. Div.) reduced the amount of the plaintiff's judgment to \$50.97, holding that the evidence of delivery of the goods to the defendants was unsatisfactory but gave plaintiff the option of a new trial as to \$887.50, the value of goods unaccounted for.

*Per* HODGINS, J.A.:—"The liability of the railway company which held the goods under the statute at the risk of the owner is only that of an involuntary bailee and it can only be made liable for wilful neglect or misconduct such as conversion or misdelivery."

*Shaw v. Great Eastern R.W. Co.*, 1894, 1 Q. B. 373, referred to.

Appeal by defendants and third parties from judgment of HON. MR. JUSTICE LENNOX at the trial (24 O. W. R. 224), in favour of plaintiffs in an action against a railway company for damages for conversion of goods entrusted to their care (see also 29 O. L. R. 634).