

REPORTS AND NOTES OF CASES.

Province of Ontario.

COURT OF APPEAL.

From Lount, J.]

[April 10.

FRANKEL & GRAND TRUNK R. W. CO.

Railways—Carriage of goods—Claim for non-delivery—Place of delivery—Consignees—Refusal to accept—Termination of transitus—Position of carriers—Bailees—Duty to have goods ready for delivery—Damages for breach.

Action for breach of contract to carry and deliver five car loads of scrap iron which the plaintiffs had sold to a rolling mill company. The contract of sale provided for delivery at the purchasers' mill at Sunnyside, Toronto, and in the shipping bills the property was addressed to the plaintiffs or the mill company, Sunnyside. The mill was situate near the defendants' main track. There was no station there, but there was a siding leading off the track into the mill. The station nearest to the mill was Swansea, and the cars containing the scrap iron arrived there, and notice of their arrival was sent to the plaintiffs and to the mill company. The station agent had previously been instructed by the plaintiffs to deliver all cars addressed to the plaintiffs at Swansea or Sunnyside to the mill company. The mill company, after inspection of the goods at Swansea, refused to accept them. The cars were not sent on to Sunnyside, but remained at Swansea, and, being in the way of traffic, had been, before the refusal to accept, run up a side line and left in a cutting. This was early in February, and while the cars were in the cutting the wheels became covered with clay by reason of a thaw, and then were frozen fast, and the cars were not got out until the end of April. The trial Judge (LOUNT, J.) found in favour of the plaintiffs, and assessed the damages at \$1,000. The defendants appealed.

Held, OSLER, J.A., dissenting, that the mill company were the consignees of the scrap iron, and had a right to put an end to the transitus at Swansea by refusing to receive it, and there was no necessity for the defendants to tender the goods at Sunnyside.

Held, however, MACLENNAN, J.A., dissenting, that the defendants were liable to the plaintiffs in damages for not keeping the cars, after the refusal, in such a position that the plaintiffs could unload them and remove their property.