REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT.

Ontario.] [Dec. 9, 1896.

LAKE ERIE & DETROIT RIVER RY. CO. *v.* SALES.

Railway company—Carriage of goods—Connecting lines—Special contract—Loss by fire in warehouse—Negligence—Pleading.

In an action by S., a merchant at Merlin, Ont., against the Lake Erie & Detroit River Ry. Co., the statement of claim alleged that S. had purchased goods from parties in Toronto and elsewhere, to be delivered, some to the G.T.R. Co., and the rest to the C.P.R. and other companies, by the said several companies to be, and the same were transferred to the Lake Erie & Detroit River Ry. Co. for carriage to Merlin. It also alleged that on receipt by the Lake Erie Company of the goods it became its duty to carry them safely to Merlin and deliver them to S., but did not allege that they were received to be carried subject to the common law liability of the company as common carriers. There was also an allegation of a contract by the Lake Erie Co. for storage of the goods and delivery to S. when requested, and of lack of proper care whereby the goods were lost. The goods were destroyed by fire while stored in a building owned by the Lake Erie Co., at Merlin.

Held, reversing the decision of the Court of Appeal, that as to the goods delivered to the G.T.R., to be transferred to the Lake Erie Co. as alleged, if the cause of action stated was one arising ex delicto, it must fail, as the evidence showed that the goods were received from the G.T.R. for carriage under the terms of a special contract contained in the bill of lading and shipping note given by the G.T.R. to the consignors, and if it was a cause of action founded on contract it must also fail, as the contract proved created only a limited liability and was not the absolute unconditional contract set up in the statement of claim.

Held, further, that as to the goods delivered to the companies other than the G. T. R. to be transferred to the Lake Erie, the latter company was liable under contract for storage alleged; that the goods were in its possession as warehousemen, and the bills of lading contained no clause, as did those of the G.T.R., giving subsequent carriers the benefit of their provisions; and that the two courts below had held that the loss was caused by the negligence of servants of the Lake Erie, and such finding should not be interfered with.

Held, also, that as to goods carried on a bill of lading issued by the Lake Erie Co., there was an express provision therein that owners should incur all risk of loss of goods in charge of the company, as warehousemen; and that such condition was a reasonable one, as the company only undertakes to warehouse goods of necessity and for convenience of shippers.

Appeal allowed in part.

Riddell, for the appellants.

Thomson, Q.C., and *Tilley*, for the respondent.