

defendants relied was contained in the same instrument as the "agreement" mentioned in the statement of claim, the plaintiffs might, consistently with their relying upon one part of it, ask to have another part reformed. Appeal dismissed with costs to the plaintiffs in any event.

A. W. Anglin, for defendants. *F. C. Cooke*, for plaintiffs.

COUNTY COURT OF THE COUNTY OF YORK.

CULVER v. LESTER.

*Common carrier—Licensed expressman—Carrying goods for hire—
Liability for loss by fire.*

The defendant, duly licensed as an expressman by virtue of a city by-law, was engaged to carry for hire a load of furniture to the railway station in one of his waggons. Before delivery the goods were destroyed by fire, not caused by the act of God or the King's enemies, and not arising from any inherent quality or defect of the goods themselves:—

Held, that the defendant was acting as a common carrier and, as such, not having limited his liability by any condition or contract, was responsible for the loss.

Brind v. Dale, 2 C. & P. 207, doubted; *Farley v. Lavery*, 54 S.W. Reporter 840 (U.S.), concurred in.

[Toronto, April 10—McDONNELL, Co. J.]

This was an action brought to recover from the defendant, a carrier, the value of certain articles of household furniture destroyed by fire while the same were in the possession of the defendant in transit to the railway station to be shipped to a point outside of Toronto. The plaintiff, desiring to have his household furniture packed for shipment by rail, employed the defendant to take his furniture from his house to the Union Station, and there delivered to the railway company. The defendant purported to carry on a cartage agency at two places in the city of Toronto. He was a duly licensed expressman under By-Law 26 of the Police Commissioners of Toronto. His bill head reads: "John Lester, cartage agency, double and single vans for the removal of furniture, baggage, pianos and all kinds of merchandise. The Lester Storage Company in connection;" and on the left-hand corner of his bill-head these additional words: "Vans for picnic and sleighing parties, lorries and express waggons at reasonable rates." No price was named or special terms stipulated for the work, the defendant being hired by the hour. The furniture was packed and loaded upon three waggons of the defendant, each waggon being in charge of one of the defendant's drivers. The waggons started for the Union Station, two of them arrived safely, the third load in charge of the defendant's son and a driver reached the station and the waggon was standing a few minutes on the weigh-scales of the railway to get the weight before being