

BRITTON, J.

DECEMBER 11TH, 1914.

## RICHARDSON v. CANADIAN PACIFIC R.W. CO.

*Carriers—Shipment of Grain—Placing in Elevator—Failure to Notify Shippers—Loss by Fire in Elevator—Insurance—Marine Policy—Adjustment—Insufficiency of Amount to Cover Loss—Negligence of Carriers—Damages.*

Action for damages for the loss by fire of a large quantity of oats shipped by the plaintiffs at Fort William for Owen Sound.

The action was tried without a jury at Kingston.

J. L. Whiting, K.C., Glyn Osler, and A. B. Cunningham, for the plaintiffs.

I. F. Hellmuth, K.C., and J. D. Spence, for the defendants.

BRITTON, J.:—The plaintiffs are dealers in grain, having their head office at Kingston. On or about the 4th December, 1911, they shipped on the defendants' steamer "Kewatin," at Fort William, 90,000 bushels of oats for carriage to Owen Sound. These oats were classified as 30,000 bushels of extra No. 1 feed oats, 30,000 bushels of No. 3 Canada Western oats, and 30,000 bushels of No. 1 feed oats. These oats were safely carried by the "Kewatin" to Owen Sound, arriving there on the 16th November, and they were transferred by the defendants from their steamer to their elevator "B" on the 9th December, 1911.

On the 11th December, before the defendants had notified the plaintiffs of the arrival of the ship or of the transfer of the oats, an accidental fire occurred, destroying elevators "A" and "B" of the defendants, and a large quantity of these oats.

At the time of placing the oats in elevator "B" the plaintiffs had other grain there; and, should it be deemed of any importance in any view of this case, I find that these oats were placed in compartments of the elevator with other oats of the same grade.

The plaintiffs' claim is that the defendants were guilty of negligence in not notifying the plaintiffs of the arrival of the steamer at Owen Sound and of her unloading and of the oats being placed in elevator "B."

The plaintiffs already, and before any of the cargo of the "Kewatin" was placed in the elevator, had an insurance upon