

FIRST DIVISIONAL COURT.

MARCH 28TH, 1919.

*PERE MARQUETTE R. W. CO. v. MUELLER MANUFACTURING CO. LIMITED.

Railway—Carriage of Goods—Freight Rates—Tariff Approved by Board of Railway Commissioners—Railway Act, R.S.C. 1906 ch. 37, sec. 314 (7 & 8 Edw. VII. ch. 61, sec. 11)—Nature of Goods Innocently Misdescribed in Bill of Lading—Rate Fixed according to True Description and Classification.

Appeal by the defendants from the judgment of MEREDITH, C.J.C.P., at the trial, declaring that the plaintiffs were entitled to be paid for the carriage of goods from San Francisco to Sarnia at the tariff rate for the carriage of copper ingots, although the goods carried were not copper ingots, but were in fact scrap-metal, and directing a reference to a Master to find the lawful tariff rate on copper ingots.

The plaintiffs, by way of cross-appeal, asked that the Court should dispense with the reference and itself find the amount to which the plaintiffs were entitled, by consulting the printed tariff in evidence, which was admitted to be the tariff authorised and approved by the Interstate Commerce Commission of the United States and the Railway Board of the Dominion of Canada.

The appeal and cross-appeal were heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

A. Weir and A. I. McKinley, for the defendants.

R. L. Brackin, for the plaintiffs.

FERGUSON, J.A., reading the judgment of the Court, said that the dispute between the parties was as to whether the rate of freight was to be fixed by the description in the bill of lading or by the true description of the commodity carried—the goods were described as copper ingots, but were in reality scrap-metal. The authorised tariff rate on copper ingots was admitted to be \$2.20 per hundred and on scrap-metal 76 $\frac{2}{3}$ cents, making a difference of \$6,692.02. The defendants had bought brass ingots and believed the goods shipped to be brass ingots and directed that they should be classified for shipment as copper ingots.

The question to be determined was, whether a common carrier could collect freight rates on metal-scrap at a rate different from the rate established by the Railway Board tariff, simply because the shipper, at the time of the shipment, innocently misrepresented what was in fact metal-scrap to be copper ingots.

* This case and all others so marked to be reported in the Ontario Law Reports.