

The following by-law of the D. A. R. was put in evidence to shew that that company limited its liability as a carrier to its own line.

"17. It is expressly agreed that the Company does not contract for the safety, carriage or delivery of any goods except on the Company's lines, and where a through rate is named to a point reached by other carriers, either by land or by water, it is on the agreement that this Company is to act only as agent of the owner of the goods as to that portion of the said rate required to meet the charges of other carriers; and if any goods be consigned to a point beyond the Company's lines, that the goods may be handed over by the Company for further conveyances to such carrier as the Company may select, and the Company in so handing over the goods shall be merely the agent of the owner, and the responsibility of the Company in respect of any loss, mis-delivery, detention, damage or injury by any means whatsoever to any goods, shall cease so soon as the Company shall either deliver them to the connecting carrier for further conveyance or notify such carrier that it is ready to do so."

The action was tried at Bridgetown in June, 1908, by MEAGHER, J., without a jury.

W. B. Roscoe, K.C., O. S. Miller and F. L. Milner, for the plaintiffs.

W. A. Henry, K.C., for the defendant.

MEAGHER, J.:—I shall for brevity call the Dominion Atlantic Railway Company "The Company," the Canadian Pacific Railway Company "the defendants," and the Railway Commissioners "the Board."

The action is to recover damages for the loss of three cases of larrigans out of a shipment of eleven cases consigned by the plaintiffs to Middleton & Co., Winnipeg.

The action is founded upon contract only and was not presented in any other form or aspect by the pleadings or upon the trial.

The third paragraph of the statement of claim alleged a contract with "the Company" for the entire journey, while the fourth averred that the cases were safely delivered at St. John to the defendants to be carried thence by them for reward and delivered to the consignees at Winnipeg, and that eight only were delivered.