

Railway—Carriage of goods—Special contract—Owner's risk—Wilful misconduct—Loss of goods—Inference from conduct.

*Smith v. Great Western Ry.* (1921), 2 K.B. 237. The plaintiff in this action claimed to recover from the defendant company for damages for the loss of goods delivered to it for carriage. The terms of carriage were that the company should not be liable for loss, damage, mis-conveyance, delay or deterioration except upon proof that the loss, damage, etc., arose from the wilful misconduct of the company's servants. The parcel in question was never delivered to the consignee. After the lapse of 19 days the plaintiffs wrote to the company to complain, and were told the matter would have immediate attention. Having heard no more for three months, their solicitor wrote to the company, and they were again informed the matter should have immediate attention. A fortnight later the solicitor wrote threatening an action unless he received by return of post some account of what had become of the parcel, and were informed by the company that the reason of delay was because all the papers in reference to the matter had been lost and that as soon as possible a definite reply would be given. A week later an action was commenced in the County Court. In answer to interrogatories the defendant company stated that it had no knowledge whether the goods had been dispatched from the place where they were received or whether they had ever arrived at their destination, that there was no record of their having been so received, and that it was believed that the goods had been lost. At the trial the defendant company offered no evidence, and contended that it had no case to answer inasmuch as there was no evidence of any wilful misconduct on the part of the company's servants. The Judge of the County Court gave judgment for the plaintiff, which was reversed by a Divisional Court (*Salter and Roche, JJ.*) and this was an appeal from that decision, and the Court of Appeal (*Bankes, Scrutton and Atkin, L.JJ.*) dismissed the appeal.

Company—Shares—Action for calls—Defence of misrepresentation in prospectus—Laches.

*First National Reinsurance Co. v. Greenfield* (1921), 2