

The
Ontario Weekly Notes

VOL. XII.

TORONTO, JULY 27, 1917.

No. 19

HIGH COURT DIVISION.

MASTEN, J.

JULY 16TH, 1917.

***GETTY AND SCOTT LIMITED v. CANADIAN PACIFIC
R.W. CO.**

Railway—Carriage of Goods—Demand of Goods after Earlier Refusal to Take Delivery—Undertaking to Pay Charges—Acceptance—Waiver of Tender—Sale of Goods to Pay Charges—Negligence—Damages—Carriers or Warehousemen—Bill of Lading—Special Provision—Value of Goods at Date of Shipment.

Action for damages for the defendants' failure to deliver goods shipped upon their railway.

The action was tried without a jury at Kitchener.

M. A. Secord, K.C., for the plaintiffs.

W. N. Tilley, K.C., and J. D. Spence, for the defendants.

MASTEN, J., in a written judgment, made findings of fact as follows: (1) that the defendants did not agree to retain the goods in their possession until the settlement of certain litigation between the plaintiffs and their vendor; (2) that the goods were duly carried to Galt, and that on the 20th May, 1915, delivery was tendered to and refused by the plaintiffs, and that thereafter the defendants were warehousemen of the goods, and as such retained possession until the 21st January, 1916, when they sold them for unpaid charges for transportation and storage; (3) that on the 17th June, 1915, the defendants made a demand in writing on the plaintiffs and their vendor for payment of charges against the goods, with a notification that, in default of payment, the goods were liable to be sold, and a similar demand on the 30th

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