

At common law and under sec. 1 of the bill of lading, the defendants were liable, as *and while* carriers, for damage to the potatoes, unless the damage can be attributed to the "act of God" or an "inherent vice in the goods," mentioned in sec. 3. The defendants could not be made liable on either of these counts.

Reference to *Ham v. McPherson* (1842), 6 U.C.O.S. 360, 364, 365.

The plaintiff had failed to prove—and the onus was on him to prove—that the damage took place while the potatoes were under the control of the defendants. The probabilities all favoured the conclusion that the freezing occurred after the car had passed out of their possession.

The action wholly failed, and should be dismissed with costs.

CANADA STARCH CO. LIMITED V. TORONTO HAMILTON AND BUFFALO R.W. CO.—KELLY, J.—Nov. 19.

Fire—Negligence—Destruction of Property—Evidence for Jury—Verdict—Damages.—Action for damages for destruction of the plaintiffs' buildings by fire alleged to have spread from the defendants' premises, where a fire was set out to burn rubbish. The action was tried with a jury at Brantford. KELLY, J., in a written judgment, said that at the close of the plaintiffs' case counsel for the defendants moved for judgment dismissing the action. The motion was refused, and the case was allowed to go to the jury, who found in favour of the plaintiffs. The learned Judge then believed and still believed that there was evidence to go to the jury from which it might reasonably be concluded, as a matter of fact and not as mere conjecture, that the fire was due to acts of negligence of the defendants. The verdict on the question of liability should not, therefore, be interfered with. The amount of damages assessed was in accordance with the uncontradicted evidence. There should be judgment in the plaintiffs' favour for \$2,079.28 and costs. E. Sweet, for the plaintiffs. J. A. Soule, for the defendants.

CORRECTION.

IN CITY OF OTTAWA V. GRAND TRUNK R.W. CO., CITY OF OTTAWA V. OTTAWA AND NEW YORK R.W. CO., ante 170, Redmond Code, not R. G. Code, K.C., appeared with D. L. McCarthy, C.K., for the defendants, the Grand Trunk Railway Company; and W. L. Scott appeared for the defendants the Ottawa and New York Railway Company.